TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [illegible] 1903.

No. [illegible] 75.

PACIFIC ELECTRIC RAILWAY COMPANY, APPELLANT,

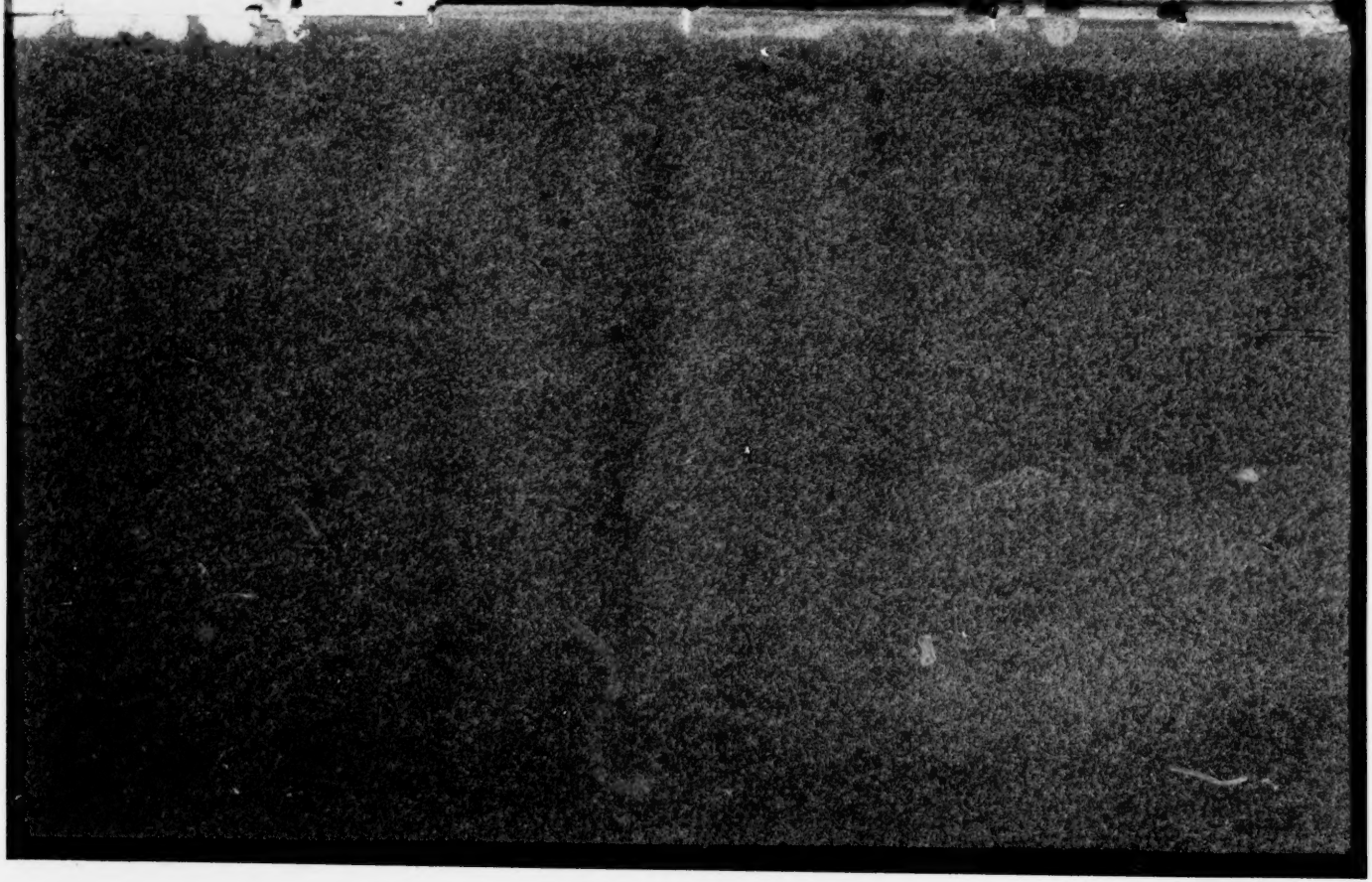
vs.

THE CITY OF LOS ANGELES, P. W. POWERS, W. H. PERCE, ET AL., &c.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

FILED DECEMBER 24, 1903.

(13,760.)



(18,760.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 532.

PACIFIC ELECTRIC RAILWAY COMPANY, APPELLANT,

vs.

THE CITY OF LOS ANGELES, P. W. POWERS, W. H. PIERCE, ET AL., &c.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., DECEMBER 26, 1902.

1 In the Circuit Court of the United States of America of the Ninth Judicial Circuit in and for the Southern District of California, Southern Division.

PACIFIC ELECTRIC RAILWAY COMPANY, Complainant,
vs.
THE CITY OF LOS ANGELES, P. W. POWERS, W. H. PIERCE, George P. McLain, Frank Walker, Wm. M. Bowen, A. A. Allen, B. S. Lauder, R. A. Todd, E. L. Blanchard, Composing the Council of the City of Los Angeles; M. P. Snyder, Mayor of the City of Los Angeles; The Los Angeles Traction Company, Wm. S. Hook, and E. A. Davis, Defendants. } No. 1018.

2 In the United States Circuit Court, Ninth Circuit, Southern District of California, Southern Division.

PACIFIC ELECTRIC RAILWAY COMPANY, Complainant,
vs.
THE CITY OF LOS ANGELES, P. W. POWERS, W. H. PIERCE, GEORGE P. McLAIN, Frank Walker, Wm. M. Bowen, A. A. Allen, B. S. Lauder, R. A. Todd, E. L. Blanchard, Composing the Council of the City of Los Angeles; M. P. Snyder, Mayor of the City of Los Angeles; The Los Angeles Traction Company, Wm. S. Hook, and E. A. Davis, Defendants.

To the honorable the judge of the United States circuit court in and for the north circuit, southern district of California:

The Pacific Electric Railway Company, a corporation organized under and in pursuance of the laws of the State of California, and having its principal place of business in the city of Los Angeles, county of Los Angeles, in the said State of California, brings this, its bill of complaint, against the said City of Los Angeles, a municipal corporation, organized under the laws of the State of California, M. P. Snyder, the mayor of the said city of Los Angeles, P. W. Powers, W. H. Pierce, George P. McLain, Frank Walker, Wm. M. Bowen, A. A. Allen, B. S. Lauder, R. A. Todd, E. L. Blanchard, composing the council of the city of Los Angeles, The Los Angeles Traction Company, a corporation organized under the laws of the State of Illinois, Wm. S. Hook, and E. A. Davis; and thereupon your orator complains and says:

3 I.

That your orator, The Pacific Electric Railway Company, is and at all the times *times* hereinafter mentioned has been a corporation duly organized under the laws of the State of California, and has its principal place of business in the city of Los Angeles, and is a citizen of said State and resident of the said State in the southern district of California.

II.

That the city of Los Angeles is and for more than fifty years last past has been a municipal corporation, organized under the laws of the State of California, and is a citizen of said State of California and a resident of the southern district thereof.

III.

That the city of Los Angeles is, under the provisions of the charter of the said city, divided into nine wards, and the council of the said city consists of one councilman from each ward; and the said defendants, P. W. Powers, W. H. Pierce, George P. McLain, Frank Walker, Wm. M. Bowen, A. A. Allen, B. S. Lauder, R. A. Todd and E. L. Blanchard, are now and during all the times hereinafter mentioned were members of and composed the said council of the city of Los Angeles.

IV.

That M. P. Snyder is and at all the times hereinafter mentioned has been the duly elected, qualified and acting mayor of the city of Los Angeles.

V.

That the defendant, The Los Angeles Traction Company, is a corporation duly organized under the laws of the State of Illinois, and is a citizen of said State.

4 VI.

That the said defendant, E. A. Davis, is a citizen of the said State of California, and a resident of the southern district thereof.

VII.

Your orator further alleges that the legislature of the State of California did, at its session held in the year 1901, pass an act entitled, "An act providing for the sale of street railroad and other franchises in municipalities, and providing conditions for the granting of such franchises by legislative or other governing bodies, and repealing conflicting acts," which said act became a law of the said State of California on the 11th day of March, 1901.

VIII.

Your orator further alleges that the following is a copy of the said act of March 11, 1901:

"SECTION 1. Every franchise or privilege to erect or lay telegraph "or telephone wires, to construct or operate street railroads upon "any public street or highway, to lay gas pipes for the purpose of "carrying gas for heat and power, to erect poles or wires for trans- "mitting electric heat and power along or upon any public street or "highway, or to exercise any other privilege whatever hereafter "proposed to be granted by boards of supervisors, boards of trus- "tees, or common councils, or other governing or legislative bodies

"of any city and county, city or town, within this State, except "steam railroads and except telegraph or telephone lines doing an "interstate business, and renewals of franchises for piers, chutes or "wharves, shall be granted upon the conditions in this act provided, "and not otherwise.

"SEC. 2. An applicant for any franchise or privilege above men-
"tioned shall file with the governing or legislative body of
5 "the municipality an application, and thereupon said gov-
"erning body shall, in its discretion, and when the application "is accompanied with a petition praying that the same be granted, "signed by the owners of three-fourths of the frontage of the real "property fronting along and upon the route of the franchise ap- "plied for, must advertise the fact of said application, together with "a statement that it is proposed to grant the same, in one or more "newspapers of the city and county, city or town wherein the said "franchise or privilege is to be exercised. Said advertisement must "state that bids will be received for such franchise, and that it "will be awarded to the highest bidder, and the same must be pub- "lished in such newspaper once a day for ten successive days, if it "be a daily newspaper, and if there be no daily paper published in "such city and county, city or town, then it shall be published in a "weekly newspaper once a week for four successive weeks, and in "either case the full publication must be completed not less than "twenty (20) nor more than thirty (30) days before any further "action can be taken thereon.

"SEC. 3. The publication must state the character of the franchise "or privilege proposed to be granted, the term for which it is "granted, and, if it be a street railroad, the route to be traversed; "that sealed bids therefor will be received up to a certain hour and "day named therein, and that the successful bidder and his assigns "must, during the life of said franchise, pay to the municipality "two per cent. (2%) of the gross annual receipts of the person, "partnership or corporation to whom the franchise is awarded, "arising from its use, operation or possession. No percentage shall "be paid for the first five (5) years succeeding the date of the fran- "chise, but thereafter such percentage shall be payable annually; "and in the event said payment is not made, said franchise shall "be forfeited; *provided further*, that if the franchise be a renewal of "a right already in existence, the payment of said percentage of
"gross receipts shall begin at once.

6 "SEC. 4. In case the franchise granted shall be an exten-
"sion of an existing system of street railroads then the gross "receipts shall be estimated to be one-half of the proportion of the "total gross receipts of said system which the mileage of such ex- "tension bears to the total mileage of the whole system, and said "estimate shall be conclusive as to the amount of the gross receipts "of said extension.

"SEC. 5. Said advertisement shall also contain a statement that "the said franchise will be granted to the person, firm or corpora- "tion who shall make the highest cash bid therefor; *provided only*, "that at the time of the opening of said bids any responsible firm or

"corporation present, or represented, may bid for said franchise or "privilege a sum not less than ten per cent. above the highest sealed "bid therefor, and said bid, so made, may be raised ten per cent. by "any other responsible bidder present, and said franchise or privi- "lege shall finally be struck off, sold and granted by said governing "body to the highest bidder therefor, in gold coin of the United "States, and said successful bidder shall be required to deposit with "said governing body, or such person as it may direct, the full "amount of his or its said bid, within twenty-four hours thereafter; "and in case he or it shall fail so to do, then the said franchise or "privilege shall be granted to the next bidder therefor.

"SEC. 6. Work to erect or lay telegraph or telephone wires, to con- "struct street railroads, to lay gas pipes for the purpose of carrying "gas for heat and power, to erect poles or wires for transmitting "electric heat or power, along or upon any public street or highway, "or to exercise any privilege whatever, a franchise for which shall "have been granted in accordance with the terms of this act, shall "be commenced in good faith within not more than four months "from the granting of any such franchise, and if not so commenced
"within said time said franchise so granted shall be declared
7 "forfeited, and shall be completed within not more than three
"years thereafter, and if not so completed within said time "said franchise so granted shall be forfeited; *provided*, that for good "cause shown the governing or legislative body may by resolution "extend the time for completion thereof, not exceeding three "months.

"SEC. 7. The grantee of every franchise or privilege granted "under this act shall file a bond running to said city and county, "city or town, with at least two good and sufficient sureties to be "approved by such governing body, in a penal sum by it to be pre- "scribed and set forth in the advertisement for bids, conditioned "that such bidder shall well and truly observe, fulfill, and perform "each and every term and condition of such franchise, and that in "case of any breach of condition of such bond, the whole amount of "the penal sum therein named shall be taken and deemed to be "liquidated damages, and shall be recoverable from the principal "and sureties upon said bond. Said bond shall be filed with such "governing body within five days after such franchise is awarded, "and in case said bond shall not be so filed, the award of such "franchise shall be set aside, and the same may be granted to the next "lowest bidder, or again offered for sale, in the discretion of said "governing body.

"SEC. 8. It shall be the duty of the attorney general, upon the "complaint of any municipality, or, in his discretion, upon the com- "plaint of any tax-payer, to sue for the forfeiture of any franchise "granted under the terms of this act, for the non-compliance with "any condition thereof.

"SEC. 9. No clause or condition of any kind shall be inserted in any "franchise or grant offered or sold under the terms of this act, "which shall directly or indirectly restrict free and open competi- "tion in bidding therefor, and no clause or provision shall be in-

"serted in any franchise offered for sale, which shall in any-
8 "wise favor one person, firm or corporation, as against an-
"other, in bidding for the purchase thereof.

"SEC. 10. Any member of any common council or other gov-
"erning or legislative body of any city and county, city or
"town of this State, who, by his vote, violates or attempts to violate
"the provisions of this act, or any of them, shall be guilty of a mis-
"demeanor, and may be punished therefor, as provided by law, and
"may be deprived of his office by the decree of a court of competent
"jurisdiction, after trial and conviction.

"SEC. 11. All acts or parts of acts in conflict herewith are hereby
"repealed; *provided, however*, that nothing herein contained shall be
"construed as repealing or amending the following acts, to wit: 'An
"act relating to the granting by the counties and municipalities of
"franchise for the construction of paths and roads for the use of
"bicycles and other horseless vehicles,' approved March twenty-
"seventh, eighteen hundred and ninety-seven; 'An act to authorize
"cities and towns to grant franchises for the construction and main-
"tenance of railroads beyond the limits of such cities or towns lead-
"ing to public parks owned thereby,' being chapter forty of the laws
"of eighteen hundred and ninety-seven of the State of California.

"This act shall take effect immediately."

IX.

Your orator further alleges that the city council of the city of Los Angeles is the governing and legislative body of said city.

X.

Your orator further alleges that under and in pursuance of the provisions of the said act, your orator did on the 25th day of November, 1901, present to the said governing body, to wit, the said council of the city of Los Angeles, an application for an electric
9 street railway franchise, to be constructed and operated upon certain public streets of this city, and hereinafter more particularly specified, and did file the said application for such franchise with the said governing body of the said municipality; and the said application so presented by your orator to the said council of the city of Los Angeles, was by said council referred to the board of public works of said city, and on the 9th day of December, 1901, the said board of public works made their report to the said council of the city of Los Angeles, stating that they had heard the protests and objections thereupon, and recommended that the said franchise be offered for sale, as hereinafter more specifically alleged, and that the city attorney should be instructed to present a notice of sale of the said franchise; and the said report of the said board of public works was considered by the council, and was by the said council duly adopted, and the said council did thereupon exercise its discretion as in the said act provided, and did determine that the said franchise should be sold. And in pursuance of the said order, a notice of sale of the said electric street railway franchise was submitted to the city council of the city of Los Angeles

on the 6th day of January, 1902; and the said council of said city did on the said day approve and adopt the said notice, and directed and instructed the city clerk to publish the same, as provided in the said act.

XI.

Your orator further alleges that in pursuance of the said instructions, the said city clerk did publish the said notice in the Los Angeles Daily Journal, a newspaper published daily in the city of Los Angeles, in the county of Los Angeles, and State of California, and said notice was published in such newspaper once a day for more than ten successive days.

XII.

Your orator further alleges that the said notice of sale of the said street railway franchise, in which is fully described the said
10 franchise so to be granted, and all the rights and privileges granted therewith, and of the streets over and upon which the said electric street railway was to be constructed and operated, and published as aforesaid, was as follows:

"*Notice of Sale of a Street Railroad Franchise.*

"Office of the city clerk of the city of Los Angeles.

"Los Angeles, Cal., *Jan. 6th*, 1902.

"To whom it may concern:

"Notice is hereby given that an application has been made to the "city council of the city of Los Angeles for a certain franchise, "granting the right to construct and for the period of forty years to "operate and maintain an electric street railroad upon certain public "streets in said city, hereinafter described, together with certain "appurtenant and incident rights hereinafter mentioned.

"And that it is proposed by said city council to offer for sale and "grant to the highest bidder said franchise, upon the terms and "conditions hereinafter mentioned.

"That said franchise is described as follows, to wit:

"A franchise to construct and for the period of forty years to "operate and maintain a double-track electric street railroad over "the route and in and upon the streets or portions of streets in said "city described as follows, to wit:

"Commencing at the intersection of Spring street and Seventh "street; thence northerly on Spring street to Fourth street; "thence westerly on Fourth street to Broadway; thence southerly "on Broadway to Seventh street; thence easterly on Seventh "street to Santa Fe avenue; thence northerly on Santa Fe "avenue to Willow street; thence westerly on Willow street to
"Mateo street; thence northerly on Mateo street to Palmetto
11 "street; thence northerly over private right of way to the "intersection of Fourth street and Santa Fe avenue; thence "northerly on Santa Fe avenue to Third street.

"Also commencing at the intersection of Seventh street and "Ceres avenue; thence northerly on Ceres avenue to its intersection "with Central avenue; thence northerly on Central avenue to Fifth "street; thence easterly on Fifth street to its intersection with the "property of the Southern Pacific Railroad Company.

"Also commencing at the intersection of Seventh street and San "Pedro street; thence northerly on San Pedro street to First street; "thence westerly on First to Broadway.

"Also commencing at the intersection of Main and First streets; "thence northerly on Main street to its intersection with Spring "street.

"Also commencing at the intersection of Seventh street and Los "Angeles street; thence southerly on Los Angeles street to Wash-"ington street; thence easterly on Washington street to Compton "avenue; thence southerly on Compton avenue to Twenty-third "street; thence southerly on Compton avenue to Thirty-eighth street; "thence easterly on Thirty-eighth street to Compton avenue (or over "private right of way from Compton avenue at Twenty-third street "to Compton avenue at its intersection with Thirty-eighth street); "thence southerly on Compton avenue to the south limits of the city "of Los Angeles.

"Also commencing at the intersection of Seventh street and "Central avenue; thence southerly on Central avenue to Eighth "street; thence easterly on Eighth street to Tennessee street; thence "southerly on Tennessee street to Little Rock avenue; thence south-"erly on Tennessee street to Sixteenth street; thence easterly on "Sixteenth street to Compton avenue (or over private right of way "from Tennessee street at Little Rock avenue to the intersection of "Compton avenue and Sixteenth street); thence southerly on Comp-
"ton avenue to Washington street.

12 "Also commencing at the intersection of Seventh street and
"Santa Fe avenue; thence southerly on Santa Fe avenue to "Ninth street; thence easterly on Ninth street to Hostetter street; "thence easterly on Park avenue to Rosalind street.

"Together with the right to construct and maintain all necessary "switches, turnouts, curves, connections at street intersections, power-"houses, and all other appliances, properties, constructions and at-"tachments that may be necessary for the purpose of operating said "road and enabling it to be as effective as the best electric street "railroads.

"That the terms and conditions upon which the said franchise "will be offered for sale and granted are the following, to wit:

"First. That the street railroad constructed and operated under said "franchise shall be used only for the transportation of passengers "and United States mail and for the transportation subject to the "conditions and restrictions hereinafter mentioned, of baggage "and such packages and commodities as can be conveniently "handled and carried in enclosed cars of the character hereinafter "described.

"That in all cases where said franchise is granted over streets "now occupied by other lines of street railways, the grantee thereof

"and his or its successors and assigns shall have the right to operate "over any and all the tracks of such other lines, subject to the pro- "visions and limitations of the statutes of the State of California "applicable thereto; and in case the gauge of the tracks of said "other lines of street railways shall not conform to the gauge of the "tracks of said grantee, his or its successors or assigns, said grantee "or his or its successors or assigns shall be permitted to lay a third "rail over the distance traversed by said two roads jointly.

"Second. That the tracks to be laid under said franchise shall be
"placed as nearly equidistant from the center of the street as
13 "possible, and as near each other as a proper regard for safety
"will allow.

"Third. That said grantee and his or its successors and assigns "shall use in the construction of said road the best material includ- "ing a rail weighing not less than sixty (60) pounds per yard, such "as is used on first-class street railroads, which rail shall be satis- "factory to the street superintendent and the board of public works; "and said rails shall be so laid as to be continuously welded or "otherwise securely fastened together; and the said grantee and his "or its successors or assigns shall at his or its or their own expense "and cost pave and macadamize the said road between the rails, "between the tracks, and for two (2) feet on each side thereof, with "the same material used by the city and under the same specifica- "tions and in the same manner as upon the streets over which said "road runs respectively; and shall keep the same constantly so "paved or macadamized and in repair, flush with the street, and "provided with suitable crossings, and shall make the road-bed con- "form at all times to the established grade of the street, provided "however, that where any of the above-named streets have been "graded or otherwise improved prior to the granting of said franchise, "said road-bed and rails shall conform to and be flush with the surface "of said graded or otherwise improved street or streets, whether "such surface be above or below the official grade of such street or "streets; and on all other street or streets said road-bed and rails "shall conform to such official grade as aforesaid. And provided "further, that upon any regrading or other improving of said street "or streets, said road-bed and rails shall, by said grantee or his or "its successors or assigns, be placed upon and be made to conform to "said official grade, all repairs and grades to be made under the "instructions and to the satisfaction of the street superintendent of
"said city. In case the said grantee or his or its successors
14 "or assigns fails to comply with the instructions given by
"said official for ten (10) days after service thereof upon the "said grantee or his or its assigns, or upon the manager or agent of "said grantee or his or its successor or assign in Los Angeles, he, "the said official, shall enter upon the road of said grantee or his or "its successors or assigns, and do the work as ordered by the city "council of the city of Los Angeles, said officer to keep an itemized "account of the cost of said work, which the said grantee and his or "its successors or assigns, by the acceptance of said franchise, agree "to pay immediately upon its being presented to said grantee or

"his or its successor or assign or to such manager or agent stationed "in Los Angeles.

"Provided further, that cars shall be run over the road constructed "under said franchise during every day unless prevented by ele- "ments, riots, strikes, or unavoidable causes.

"Provided also, that cars shall be run each way over and upon said "road at intervals of not more than fifteen (15) minutes during the "daytime and until eleven (11) o'clock at night of each day, and as "much oftener as may be necessary to carry and provide with seats "all persons who may apply for transportation over said road, ex- "cept in times of extraordinary and unfor-seen amount of travel. "That said cars shall be in all respects at all times, as efficiently "constructed and conveniently equipped as the cars in use upon the "best electric street railways in the city of Los Angeles.

"That no cars shall be used on said road, or on any part thereof, "for the carriage of baggage, packages or commodities, except en- "closed cars of neat and attractive design and construction, and not "exceeding in length or width the cars used for carrying passen- "gers only.

"And provided, further, that no such cars used for the carriage "of baggage, packages or commodities shall ever be run or operated "over any part of said route hereinbefore described which 15 "runs along any part of Broadway, Main or Spring streets in "said city.

"Provided further, that said grantee and his or its successors or "assigns, shall construct all necessary flumes and culverts for the "free passage of water under the tracks of said railroad wherever and "whenever necessary, and that all such flumes, and culverts, and all "curves, acqueducts, turnouts and switches shall be constructed in "accordance with plans and specifications approved by the city "engineer.

"Provided further, that said grantee and his or its successors and "assigns shall have the right to excavate and remove portions of the "streets necessary to properly construct said road, and to erect need- "ful apparatus, boilers, engines and other appliances, to properly "equip and run said road.

"Provided further, that the city of Los Angeles in granting said "franchise expressly reserves the right to pave, macadamize, renew "or sewer any of the said streets, or to lay gas, water or other pipes "therein, said work to be done so as to injure said road as little as "possible.

"Provided further, that the cars upon said road shall not be "allowed to stand on any street or on any street intersection in such "a manner as to obstruct the use of said street by vehicles or "pedestrians.

"Fourth. That the grantee of said franchise and his or its succes- "sors and assigns shall and will at all times, upon and after the "completion of said road, during the operation of the same, and "without extra charge, issue to and receive from passengers going in "one direction, transfers good for continuous passage over and upon "any and every other line and lines of any other road or roads

"within the said city which said grantee or his or its successors or "assigns does now or may hereafter own, control, operate, or have a "controlling interest in; and provided, as a further condition, that said "grantee and his or its successors and assigns shall and will at
16 "all times, as aforesaid, issue or cause to be issued to said pas- "sengers without extra charge, a similar transfer from any "and every other line or lines which said grantee or his or its succes- "sors or assigns does now or may hereafter own, control, operate, or "have a controlling interest in as aforesaid, to, over and upon the "road operated and maintained under said franchise.

"Fifth. That the rate of fare for any distance over said road or its "branches one way, shall not exceed five cents for one passenger.

"That persons under the age of eighteen years, who attend the "public schools of said city, shall be required to pay but half fare; "provided, that said pupils shall purchase their tickets in quantities "of at least one dollar's worth at a time; such tickets to be availa- "ble only between the hours of eight a. m. and six p. m., in actual "passage to and from school; and that said grantee and his or "its successors and assigns shall sell such tickets whenever requested "so to do by a pupil who shall present a certificate from a teacher, "approved by the superintendent of schools of the city, that he or "she is a pupil of said schools.

"And, provided further, that said grantee and his or its successors "and assigns shall carry all regular and special policemen and "police officers and firemen, the mayor and councilmen, and letter- "carriers free on said cars, when on duty, subject at all times to the "rules of the road."

"Provided, further, that said grantee and his or its successors and "assigns shall on or before December 15th of each year, pay to the "city tax and license collector of the city of Los Angeles, the annual "license upon each car, that is now or may be hereafter fixed by the "ordinances of said city.

"Sixth. That said grantee and his or its successors and assigns "shall during the life of said franchise pay to the city of Los "Angeles, in lawful money of the United States, two per cent.
17 "of the gross annual receipts of such grantee, and his or its "successors and assigns, arising from the use, operation, or "possession of said franchise. No percentage shall be paid for the "first five years succeeding the date of said franchise, but thereafter "such percentage shall be payable annually, and said franchise is "to be forfeited by failure to make the payments provided for. "Provided, that if the road for which said franchise is granted shall "be an extension of an existing system of street railroad, then the "gross receipts shall be estimated to be one-half of the proportion of "the total gross receipts of said system which the mileage of such "extension bears to the total mileage of the whole system, and said "estimate shall be conclusive as to the amount of the gross receipts "of said extension.

"And provided, further, that if the road for which said franchise "is granted, shall be operated by said grantee, his or its successors "or assigns, in connection with, or as a part of a system of inter-

" urban street railroads, then the gross receipts shall be estimated to " be that proportion of the total gross receipts of the whole of said " system of interurban street railroads which the mileage of the road " for which said franchise is granted bears to the total mileage of the " said whole system, and said estimate shall be conclusive as to the " amount of the gross receipts arising from the use, operation or " possession of said franchise.

" And it shall be the duty of the grantee of said franchise, and of " his and its successors and assigns, to file with the city clerk of the " city of Los Angeles, at the expiration of six years from the date of " the granting of said franchise, and at the expiration of each and " every year thereafter, a statement verified by the oath of said " grantee or his or its successors or assigns, or by the oath of the " manager or presiding officer of said grantee or its successors or
" assigns, showing the total gross receipts and gross earn-
18 " ings collected or received by said grantee or his or its suc-
" cessors or assigns, during the preceding twelve months, from " all traffic over any part of the line for the construction and opera- " tion of which said franchise is granted, or over any part of the " system of street railroad of which it may be an extension, or over " any part of an interurban system of street railroads of which it may " be a part, and from all other sources, and within ten days after the " time for filing aforesaid statement, it shall be the duty of said " grantee and his and its successors and assigns to pay to the city " treasurer of the city of Los Angeles the aggregate sum of the said " percentage upon the amount of the gross annual receipts arising " from the use, operation or possession of said franchise, determined " and computed in the manner hereinbefore provided.

" And any neglect, omission or refusal by said grantee, or his or " its successors or assigns, to file said verified statement or to pay " the said percentage of the said gross annual receipts at the times, " or in the manner hereinbefore provided shall *ipso facto* work a for- " feiture of the franchise herein proposed to be granted and of all " rights thereunder, to the city of Los Angeles.

" Seventh. That the work of constructing said road shall be com- " menced in good faith within not more than four months from the " date of the granting of said franchise, and shall be continuously " prosecuted thereafter in good faith and without unnecessary or " avoidable intermission or delay; that said work of construction " shall be completed within not more than three years thereafter; " that said work of construction shall be commenced at the terminus " of said road farthest from the city hall of said city and continu- " ously prosecuted so that at least one-third of the work of construct- " ing said road shall be completed within one year from the time of " commencement; and that if said work be not so commenced, " prosecuted or completed within the times, or in the manner speci-
" fied, said franchise shall be forfeited.
19 " Eighth. That said grantee or his or its successors or as-
" signs shall not sell, transfer or assign any of the rights or " privileges granted by said franchise, except by a duly executed " instrument in writing filed in the office of the city clerk of the city

"of Los Angeles; and provided further that nothing in said fran-
"chise contained shall be construed to grant to said grantee or his
"or its successors or assigns any right to sell, transfer or assign said
"franchise or any of the rights or privileges thereby granted, except
"in the manner aforesaid.

"Ninth. That the grantee of said franchise shall within five days
"after such franchise is awarded, file with the city council of the
"city of Los Angeles, a bond running to said city, with at least two
"good and sufficient sureties, to be approved by said city council, in
"the penal sum of twenty-five thousand dollars ($25,000), condi-
"tioned that said grantee, his or its successors or assigns, shall well
"and truly observe, fulfill, and perform each and every term and
"condition of said franchise, and that in case of any breach of con-
"dition of such bond, the whole amount of the penal sum therein
"named shall be taken and deemed to be liquidated damages,
"and shall be recoverable from the principal and sureties upon said
"bond. In case said bond shall not be so filed, the award of such
"franchise shall be set aside, and the same may be granted to the
"next highest bidder, or again offered for sale, in the discretion of
"said city council.

"Tenth. That any neglect, failure or refusal to comply with any
"of the conditions of said franchise, shall thereupon immediately
"*ipso facto* effect a forfeiture thereof, and the said city, by its city
"council, may thereupon declare said franchise forfeited and may
"exclude said grantee, his or its successors and assigns, from further
"use of the streets of said city under said franchise, and said grantee
"and his or its successors and assigns, shall thereupon and
"immediately surrender all rights in and to the same, and
"said franchise shall be deemed and shall remain null, void
"and of no effect.

"Notice is also hereby given that sealed bids in writing will be
"received for the said franchise up to 11 o'clock in the forenoon of
"the 10th day of February, 1902; that the bids received will be
"opened at that time; that all bids must be for the payment of a
"stated sum in gold coin of the United States; and that said fran-
"chise will be granted to the person, firm or corporation who shall
"make the highest cash bid therefor; provided, only, that at
"the time of opening said bids any responsible firm, or corporation,
"present or represented, may bid for said franchise a sum not less
"than ten per cent. above the highest sealed bid therefor, and said
"bid so made may be raised ten per cent. by any responsible bidder
"present, and said franchise will finally be struck off, sold and granted
"by said city council to the highest bidder therefor in gold coin of
"the United States, and said successful bidder will be required to
"deposit with said city council, or such person as it may direct,
"the full amount of his or its bid within twenty-four hours thereafter,
"and in case he or it shall fail to do so, then the said franchise shall
"be granted to the next highest bidder therefor, and that the city
"council reserves the right to reject any or all bids, provided, that
"no bid, whether sealed or otherwise, shall be received or considered

"unless the same be in writing and subscribed by a responsible bid-
"der, or by his or its duly authorized agent.

"C. H. HANCE,
"*City Clerk of the City of Los Angeles.*"

XIII.

Your orator further alleges that in pursuance of the said proceedings taken by the said council of the city of Los Angeles, and
21 of the said notice so published, your orator did, prior to 11 o'clock in the forenoon of the 10th day of February, 1902, deliver a sealed bid to the said council of the city of Los Angeles, for the said franchise and privileges in the said notice described, and did bid therefor the sum of twenty-five thousand dollars ($25,000.00.)

XIV.

Your orator further alleges that the said Wm. S. Hook, who is the president of the Los Angeles Traction Company, did present to the said council a sealed bid for the said franchise described in the said notice, bidding therefor the sum of thirty-seven thousand five hundred dollars ($37,500.00).

XV.

Your orator further alleges that the defendant, E. A. Davis, presented a sealed bid, offering to purchase the said franchise for the sum of one hundred and thirty-nine thousand dollars ($139,00-.00).

XVI.

Your orator further alleges that one, E. Murray, presented a sealed bid to said council, offering to purchase the said franchise for the sum of four hundred and fifteen thousand dollars ($415,000.00); and that the said bids hereinbefore enumerated were the only bids presented to the said council; and that the said bids, and each of them, was received by the said council, and on the said 10th day of February, 1902, were opened, and there being no bid of ten per cent. upon the amount bid by the said E. Murray, the said council did on the same day accept the said bid of the said E. Murray, and ordered that the said franchise be struck off, sold and granted to the said E. Murray, and thereupon the said council ordered that the city treasurer be authorized and directed to receive the money to be paid for such franchise by the said E. Murray, and upon motion of Wm. M. Bowen, duly seconded, the said council did order and declare that the period of twenty-four hours within which the said E. Murray is allowed by law to pay for the said franchise, should expire at 3.15 o'clock p. m. of February 11, 1902.

22 XVII.

Your orator further alleges that in truth and in fact the said bid of Wm. S. Hook, and the bid of E. A. Davis, and the bid of E. Murray, were all made on behalf of the said Los Angeles

Traction Company; and that the said bids were so made with the fraudulent intent to prevent competition in the bidding before the council. And your orator alleges that the said bid of the said E. Murray for the sum of $415,000.00 was put in and at the suggestion and for the benefit of the said Los Angeles Traction Company, and with the fraudulent intent to prevent any further bidding when the sealed bids were opened; the said Los Angeles Traction Company and the said Wm. S. Hook, and the said E. A. Davis, well knowing that no bid of ten per cent. upon the bid of E. Murray would or could be made for the said franchise, and well knowing that the said franchise was not worth the said sum of $415,000.00.

XVIII.

Your orator further alleges that the said E. Murray is not a person of any financial standing, and was not worth at the time the said bid was made, or at any time since, one thousand dollars ($1000.00), and could not either from any funds of his own or through any credit of his own, have paid, and never intended to pay the said sum of $415,000 or any part thereof; all of which was well known and understood by the said Los Angeles Traction Company, and the said E. A. Davis, and the said Wm. S. Hook. And the said E. Murray did not pay the said sum of $415,000.00 within twenty-four hours, and never offered to pay the said sum or any sum at any time, and never appeared before the council on the 11th day of February, 1902, nor at any other time.

XIX.

Your orator further alleges that the Los Angeles Traction Company, and the said E. A. Davis, and the said Wm. S. Hook, the agents of the said company, did appear before the said council
23 on the said 11th day of February, 1902, and when the twenty-four hours expired, and in pursuance of the fraudulent scheme to prevent competition in the bidding, claimed and pretended that the said council of the city of Los Angeles had no power or authority under the act aforesaid to do any other thing or take any other proceedings looking to the sale of the said franchise, save and except to accept the bid next highest to that of the said E. Murray, to wit, the bid of E. A. Davis for the sum of $139,000.00 and thereupon to sell and grant to the said E. A. Davis the said franchise, and demanded that the said franchise be awarded to the said E. A. Davis on said bid, and for the benefit of the said Los Angeles Traction Company.

XX.

Your orator further alleges that throughout the said proceedings the said E. A. Davis was acting for and on behalf and in the interest of the said Los Angeles Traction Company, and sought to obtain the grant of the said franchise to himself, but for the benefit of the said defendant, The Los Angeles Traction Company.

XXI.

Your orator further alleges that on the 10th day of February, 1902, at the opening of the said bids, including that of the said E. Murray, there were no further bids offered by any person, save only those which have been hereinbefore set forth.

XXII.

Your orator further alleges that your orator, having before the twenty-four hours expired from the time of the opening of the said bids on the 10th day of February, 1902, become apprised of the fact that the said bid of the said E. Murray was a fraudulent contrivance of the said Los Angeles Traction Company, Wm. S. Hook and E. A. Davis, intended by them to prevent any further offer or bid, and knowing that said E. Murray would not appear within twenty-four hours and pay the said bid or any part thereof, did appear by its duly author-
24 ized agents before the said city council on the said 11th day of February, 1902, and prior to the expiration of the said twenty-four hours did present in writing a bid of one hundred and fifty-two thousand nine hundred dollars ($152,900.00) for said franchise, and being ten per cent. over and above the bid of the said E. A. Davis, and when the said twenty-four hours had expired did offer to the said council of the said city of Los Angeles the said sum of $152,900.00.

XXIII.

Your orator further alleges that upon the presentation of the said bid by your orator on the 11th day of February 1902, for the said sum of $152,900.00 for the said franchise, the said council did call before them the said city treasurer, and the said city treasurer did thereupon inform said council that the purchase-money for the said franchise so sold to E. Murray had not been paid. And thereupon Mr. E. L. Blanchard, a member of the said council, moved that the said E. Murray be declared a fraudulent and irresponsible bidder for the electric railway franchises for which he had presented his bid, and each of them, and his said bids null and void, which motion was seconded by R. A. Todd, another member of the said council. And the said motion so made by the said E. L. Blanchard and seconded by the said R. A. Todd, was carried by the vote of seven of the councilmen, to wit: A. A. Allen, E. L. Blanchard, Wm. M. Bowen, B. S. Laudier, George P. McLain, W. H. Pierce, and R. A. Todd, there being no votes against the said motion, except the vote of Frank Walker, and P. W. Powers, members of the said council, and P. W. Powers, president thereof.

XXIV.

Your orator further alleges that after the said order of the said council declared the said bids of the said E. Murray fraudulent and null and void, the matter of the sale of the said street railway franchise over the route commencing at the intersection of Seventh

and Spring streets, was taken up for consideration, and thereupon your orator did bid for the said franchise the said sum of
25 $152,900.00, and being the same franchise described in the notice of sale hereinbefore set forth. And your orator did at the same time that the said bid was made, present to the said council of the city of Los Angeles, a certificate of deposit, drawn on the Farmers' & Merchants' Bank of Los Angeles, payable to the city of Los Angeles, for the said sum of $152,900. That thereupon the president of the council did at the same meeting call for bids to purchase the said franchise other or above the bid so made by your orator, as aforesaid, and no other bids were made or received by the said council. And thereupon, on motion of the said E. L. Blanchard, one of the said council, seconded by A. A. Allen, another of the said council, it was ordered that the said street railway franchise, over the said route, be struck off, sold and granted to The Pacific Electric Railway Company, your orator, for the said sum of $152,900, and that the said treasurer be, and he was, authorized and directed to receive the purchase-money. That the said order was made, striking off, selling and granting to the said Pacific Electric Railway Company the said franchise described in the said notice hereinbefore set forth, for the said sum of $152,900.00, and authorizing and directing the said treasurer to receive the said purchase-money, and was carried by vote of six members of the said council, to wit, A. A. Allen, E. L. Blanchard, B. S. Lauder, George P. McLain, W. H. Pierce and R. A. Todd. And your orator further alleges that under and in pursuance of the said order, the said sum of $152,900 was paid by your orator to the treasurer of the city of Los Angeles, in gold coin of the United States, for said franchise, and was accepted by the said treasurer and by the said council of the city of Los Angeles. And thereupon and immediately your orator did, as principal, and John D. Bicknell and Wm. G. Kerchkoff, as sureties, execute a bond in the sum of twenty-five thousand dollars ($25,000.00), as provided for in the said notice of sale and said statute of the State of Cali-
26 fornia, conditioned for the faithful performance of the terms of said street railway franchise, over the said route commencing at the intersection of Seventh and Spring streets, and did deliver the same to the said council of the city of Los Angeles. And thereupon the said council did approve the said bond, and accept the same, and did cause the same to be filed in the office of the city clerk of the city of Los Angeles. And thereupon the said money having been paid to the city treasurer, as aforesaid, and the said bond, which was in all respects in conformity with the said act of the legislature of the State of California, and of the said notice of sale, having been accepted and approved, the said council of the said city did thereupon finally strike off, sell and grant to your orator the said franchise.

XXV.

Your orator further alleges that several street railway franchises had been offered for sale by said council at about the same time, and bids were received upon each of them, and the said E. Murray had

interposed a bid upon each of them, and the said franchises had been awarded to the said Murray, and the said Murray had failed to make payment on his bid upon any of them and that in the resolution or motion made by the said E. L. Blanchard, and seconded, and carried by the said council, declaring his said bids and each of them fraudulent, the said council were referring to bids of the said Murray for the franchise hereinbefore described, and also said other franchises.

XXVI.

Your orator further alleges that the said E. A. Davis, and the said Wm. S. Hook, and the said Los Angeles Traction Company, did on the said 11th day of February, 1902, claim and pretend that the said E. A. Davis had become entitled to the said franchise hereinabove set forth, and did then and there tender to said council the amount of the bid of the said E. A. Davis, to wit, $139,000.00,
27 gold coin, but which said tender was refused by the said council of the city of Los Angeles. And the said E. A. Davis and Wm. S. Hook, and the said Los Angeles Traction Company did then and do now claim an interest in the said franchise, and claim that the said E. A. Davis is the owner thereof, and do make said claim adversely to your orator.

XXVII.

Your orator further alleges that the said claims of the said defendants, E. A. Davis, Wm. S. Hook, and The Los Angeles Traction Company are and each of them is without any foundation whatever, and they have not nor has either of them any right, title or interest in the said franchise, nor any right to construct a street railroad or operate cars thereon on any of the said streets mentioned therein, or to exercise any of the franchise rights or privileges so struck off, sold and granted to your orator.

XXVIII.

Your orator further alleges that after your orator had paid the said sum of $152,900.00, to the city treasurer, and executed and delivered to the said city council the bond as aforesaid, and said bond had been accepted and approved by the city council and filed in the office of the city clerk, and after the said council of the city of Los Angeles had struck off, sold and granted to your orator the said franchise, and after the title of your orator to said franchise, rights and privileges, so purchased by it had vested and accrued, the said city council did pass an ordinance granting the said rights, privileges and franchises to your orator, and presented the said ordinance to the said M. P. Snyder, as mayor of the city of Los Angeles, and the said M. P. Snyder did afterwards and before the 21st day of February, 1902, return the said ordinance without having affixed his signature thereto, or approved the same, and with his objections to the said ordinance. And thereafter, to wit, on the 21st day of February, 1902 the said council did, by reason of the said mayor's disapproval of the said ordinance,

adopt a motion that the said ordinance should be re-
28 considered, and upon the vote being again taken upon the passage of the said ordinance, notwithstanding the mayor's veto, the said council did vote against the passage of said ordinance. And thereupon and on the same day the said city council passed a resolution pretending and purporting to order any and all bids for the said electric street railroad franchises in the said city of Los Angeles, to wit the said franchise, rights and privileges so purchased by your orator, and including the bid made by your orator for the said franchise, rights and privileges hereinbefore set forth, to be rejected and directing and pretending to authorize the said treasurer of the city of Los Angeles to refund to your orator the said sum of $152,900.00, so bid and paid by your orator for the said franchise, and did order the said city clerk to return the said bond in the sum of $25,000.00, executed as hereinbefore set forth, to your orator. And your orator further alleges that all of the said proceeding attempting to deprive your orator of the said property, as hereinabove set forth, was taken by the said council under the pretense that the approval of the mayor of the city of Los Angeles to the said ordinances was necessary to give it validity or to make effectual the grant made by the said city of Los Angeles to your orator of the said franchise, rights and privileges. But your orator alleges that under the said statute of the State of California hereinbefore set forth, the council of the city of Los Angeles had no discretion as to, or in the disposing of, the bid of your orator for the said property right, franchise and privileges; but, on the contrary, were by the operation of the said act of the legislature ordered to strike off, sell and grant the same to your orator, and no ordinance was necessary to perfect the said grant, and the said mayor of the city of Los Angeles was not authorized to perform any function in, about or concerning the said sale of franchises, rights and privileges, under the said act, and had no power either to approve or disapprove any such sale, and the said pretended veto of the said ordinance by the said mayor
29 was wholly void and had no effect whatever upon the rights of your orator. But, on the contrary, the title of your orator was fully vested under the statute, and there was no power or authority, either in the mayor or the council, or in both, to in any manner affect the rights which had accrued to your orator by virtue of its purchase.

XXIX.

Your orator further alleges that at the same session of the said council, Wm. M. Bowen, one of the members thereof, moved that the applications of the Pacific Electric Railway Company for franchises over certain streets in the city of Los Angeles be referred to the board of public works, and that said board redraft notice of sale of the same; and which motion being duly seconded, was by the said council carried; and that among the said applications of your said orator referred to in the said motion, was included the said application upon which the said sale was made to your orator

as aforesaid of the franchise, rights and privileges, hereinbefore described.

XXX.

Your orator further alleges that it had become vested with the title to the franchises, and it is now the absolute owner of the said franchises so granted to it as hereinbefore set forth, and that the said resolutions or the orders of the council pretending to reconsider the said vote and readvertising the said application of your orator for the purchase of the said franchise, and all other proceedings taken for the purpose of vacating and setting aside the grant so made to your orator, have been made, taken and had by the said council without any authority whatever, and such action has been taken with the intent to deprive your orator of its said property without due process of law and in violation of the provisions of the Constitution of the United States, prohibiting any State from depriving any person of life, liberty or property without due process of law.

30 XXXI.

Your orator further alleges that by the provisions of the statute under which its said property rights were acquired, and also by the notice of sale and the order granting the said franchise to your orator, it is required to commence the construction of the said road and to commence work thereon in good faith within not more than four months from the granting of the said franchise, to wit, from the said 11th day of February, 1902 and is required to complete the same within three years after said date.

XXXII.

Your orator further alleges that it is desirous of performing the conditions of the said grant and to maintain and preserve its property rights in the said franchises, and for that end desires to commence work upon the same in the construction of the said road and for the purpose of completing the same at the earliest practicable moment, and to operate its cars and exercise its said privileges and franchises as soon as practicable; and your orator further alleges that the construction of the said road and the operation of cars thereon, and the exercise of the said franchises are necessary to facilitate public business and transportation, and that from the operation of the said roads and the exercise of the said franchise and privileges large profits will accrue to your orator.

XXXIII.

Your orator further alleges that the said council of the city of Los Angeles and other public authorities threaten and intend to prevent your orator from constructing or attempting to construct the said street railway on any public street in the city of Los Angeles, and they will forcibly prevent your orator from constructing or attempting to construct the street railway upon the streets mentioned in the said franchise, or any of them, or exercising any other right,

privilege or franchise so granted to your orator. And on the
31 26th day of February, 1902, the said city council did pass an order instructing the mayor, the street superintendent, and the chief of police, to stop and prevent any attempt that your orator might make to construct any street railway on any of the said public streets, with all the force at their command. And your orator further alleges that the said public officers and police force of this city, acting under the said instructions, will undertake by violence to prevent your orator from constructing said railway or attempting to construct, or exercising any of the said privileges or franchises, or having any enjoyment of its said property so acquired as aforesaid, unless prevented by this court.

XXXIV.

Your orator further alleges that by the said grant made by the said council of the city of Los Angeles to your orator on the 11th day of February, 1902, the said council did grant to your orator and its assigns, the right, privilege and franchise to construct and for the period of forty years to operate and maintain a double-track electric street railroad over the route and along and upon the streets and portions of streets in the said city of Los Angeles, as described in the said notice hereinbefore set forth. And that the said grant did also grant to your orator and its assigns the right to construct and maintain all necessary switches, turnouts, curves, connections at street intersections, power-houses, and all other appliances, property, constructions and attachments, that might be necessary for the purpose of operating the said road and enable it to be as effective as the best electric street railroad. And it was provided therein that the said railroad should be constructed and at all times operated and maintained, and said right, privilege and franchise granted should at all times be exercised and enjoyed in accordance with and subject to each and every of the terms and conditions of the said grant, and not otherwise. That such street railroad constructed and operated under the said franchise, should be used only for the transportation of passengers and United States
32 mail, and for the transportation, subject to the conditions and restrictions in the said grant mentioned, of baggage and such packages and commodities as could be conveniently handled and carried in enclosed cars of the character therein described. And said grant was also upon all the other terms and conditions which were mentioned in the said notice, including the provision that the work of constructing the said road should be commenced in good faith within not more than four months from the date of the grant of the franchise, and continuously prosecuted thereafter in good faith and without unnecessary or avoidable intermission or delay, and said work of construction should be completed within not more than three years thereafter; and that said work of construction should be commenced at the terminus of said road furthest from the city hall of said city, and continuously prosecuted so that at least one-third of the work of constructing said road should be completed within one year from the time of commencement; and

that if said work were not so commenced, prosecuted or completed within the time and in the manner specified, the said franchise should be forfeited.

And your orator alleges that the said franchise which was so offered for sale, and upon which the said bids were made, and for which your orator bid the said sum of $152,900, were the same franchise, rights and privileges mentioned in the said notice for bids hereinbefore fully set forth, and with all the terms and conditions therein in the said notice specified; and the said bid of $152,900.00 was accepted by the said council of the said city for the said franchise, under the said terms and conditions and subject to all of the provisions mentioned in the said notice, and not any other or different franchise or different terms or conditions; and the said sum was paid by your orator for the said franchise, rights and privileges, and accepted by the said council as the highest bid for and price paid for said franchise, rights and privileges, under the said terms and conditions, and no others; and said franchise, rights and
33 privileges so described in the said notice, with all of the terms and conditions specified therein were struck off, sold and granted to your orator on the said 11th day of February, 1902, for and in consideration of the payment of the said sum.

XXXV.

Your orator further alleges that the said bond executed by your orator as principal, and the said John D. Bicknell and William G. Kerchkoff, as sureties, by which they were jointly and severally held and firmly bound unto the city of Los Angeles in the sum of $25,000, to be paid to the city of Los Angeles, did recite and refer to the said franchise to construct, operate and maintain a double-track electric street railroad for a period of forty years over the route and along and upon the streets in the city of Los Angeles, State of California, described in the said bond, and which description was the same as in the said notice contained, together with the right to construct all necessary switches, turnouts, curves, and connections at street intersections, power-houses, and all other appliances, properties, structures and attachments that might be necessary for the purpose of operating said road and enabling it to be as effective as the best electric street railroad, which was on the 11th day of February, 1902, sold and awarded by the said council of the city of Los Angeles to the said Pacific Electric Railway Company, subject to the terms and conditions mentioned and contained in the notice of sale of said franchise, a copy of which was attached to the bond and made a part thereof; and said bond was conditioned that if the said Pacific Electric Railway Company, its successors and assigns, should well and truly observe, fulfill and perform each and every term and condition of said franchise mentioned and contained in the said notice of sale, that the said obligation should be void, otherwise to remain in full force and effect. And said bond was executed to secure the performance of the said conditions mentioned in the said grant of said franchise so sold to your orator on the said 11th day
34 of February, 1902, for the said sum of $152,900.00.

XXXVI.

Your orator further alleges that your orator did thereupon, upon the award and grant of the said franchise to your orator by the said council of the city of Los Angeles, become vested with the title to the said franchise, rights, and privileges so sold to your orator, and become bound by all the terms and conditions by which your orator was to hold the said property mentioned therein, and your orator ever since has been and still is the owner in fee of all the said rights and privileges and franchise therein granted, and subject to the said terms and conditions on said grant.

XXXVII.

Your orator further avers that in order to perform the said conditions, and especially in order to construct the said road and put the same in operation, as in the said contract provided, it is necessary that your orator should begin immediate construction thereof; that in order to commence such construction, it will be necessary for your orator to incur great expense in the purchase of necessary material, machinery and appliances of all kinds, necessary to the construction of the said road, turnouts, switches, and other adjuncts and auxiliaries to the operation of the said road, and to provide rolling stock and other appliances necessary to the equipment and operation of the said road; and that contracts will have to be made for the purchase thereof, laborers will have to be employed, and contracts made for the construction of the said road, and work commenced thereon immediately. And your orator alleges that the said city of Los Angeles and the said city council have threatened and do intend and will, unless restrained by this court, prevent your orator from commencing the construction of the said road and those works and appliances, adjuncts and auxiliaries necessary to the construction and operation of the said railroad, and the exercise of the said rights, privileges and franchise so purchased by your orator;
35 and that such interference will be made by and through the use of the police force of the city of Los Angeles; and your orator will by force and violence be by said city and said city council and its officers, prevented from the enjoyment of its said property and the exercise of its said rights and privileges, and the construction of the said road and putting the same in operation; and by reason thereof your orator — prevented from having any use, benefit and advantage which would accrue to it from the operation of the said road and the exercise of the said privileges and franchise, and which it ought in right to have under the grant so made to it.

XXXVIII.

Your orator further alleges that the said orders made by the said council after the granting of the franchise aforesaid to your orator, pretending to reconsider the same and to vacate and set aside the said grant to your orator, referred to the said franchise, rights and privileges hereinbefore described, and for which your orator had

paid to the said city of Los Angeles, the said sum of $152,900. And your orator further alleges that the said council of the said city of Los Angeles do threaten and intend and will, unless restrained by this court, offer the said franchise, rights and privileges for sale again, and will, if any bids are made therefor, sell or attempt to sell the same, and grant or pretend to grant the same rights, privileges and franchise to any person making the highest bid therefor at such attempted resale.

XXXIX.

Your orator further alleges that the said proceedings so taken by the said council, reconsidering the said vote and attempting to cancel and annul the said grant so made to your orator, were utterly void and of no effect whatever; yet, nevertheless, such resale will cast a cloud upon the title of your orator, and your orator will be greatly hindered and impeded in the exercise of the said franchise, and in the use and enjoyment of the property so belonging to it under the said grant.

36

XL.

Your orator further alleges that the said council of the city of Los Angeles, in furtherance of their purpose and design to deprive your orator of the property rights so acquired by it under its purchase of the said franchise, rights and privileges aforesaid, did instruct the treasurer of the city of Los Angeles to return the said $152,900.00, to your orator, and also to return the bond which had been executed as aforesaid, and unanimously approved by the council and filed with the city clerk, to your orator; and the said treasurer of the said city and the clerk of the council, acting under the instructions of the said council did offer to return the said sum of money and the said bond, but your orator refused to accept either the said money or the said bond, and denied the right of the said council of said city to vacate or annul the said grant so made to your orator, or to in any manner affect the rights of your orator so acquired under the said purchase.

XLI.

Your orator further alleges that if the said council of the city of Los Angeles does sell the said franchise, rights and privileges, again to any other person, they will, as your orator is informed and believes and therefore alleges, aid such purchaser, with the police force of the city of Los Angeles, to take possession of the said property, route, franchise, rights and privileges, and to construct the said road over and along the said streets and to oust and exclude your orator therefrom. And your orator would be compelled to resort to a multiplicity of suits to protect its property rights, and be at great expense in protecting and defending the rights, privileges and franchise so purchased by it, and its right to exercise and enjoy the same. And your orator, in order to maintain its said property rights, will be compelled to expend a large sum of money in providing for the con-

struction of said road and in constructing the same, or else to
37 hazard the forfeiture of its right, by refraining from making such expenditures and incurring obligations for large sums of money for such material and appliances as are necessary in the construction thereof. And your orator would suffer great and irreparable damage, and such damages as cannot be compensated in money.

XLII.

Your orator further alleges that the said acts of the said council of the city of Los Angeles, in attempting to repeal, rescind, vacate and annul the said grant so made to your orator, and the acts of the said council providing and ordering the mayor and the police force of the city to forcibly wrest the said property from your orator, and to prevent your orator from exercising the rights, privileges and franchises granted to it, and threatening resale thereof, are each and all of them, and all proceedings taken by the said council to divest your orator of the said rights or to impair the same, or to prevent your orator from exercising the said rights, franchises and privileges, are in violation of the Constitution of the United States and are void. And your orator has no adequate remedy either for the enforcement of its rights or protecting its said property, save only in a court of equity.

XLIII.

Your orator further alleges that the matter in dispute in this action exceeds, exclusive of interest and costs, the value of two thousand dollars ($2,000.00) and is of a value of not less than one hundred fifty-two thousand, nine hundred dollars ($152,900.00).

To the end that your orator may obtain relief in the premises in this honorable court, where alone relief can be afforded, your orator prays that a writ of subpœna be granted to your orator against the defendants, The City of Los Angeles, P. W. Powers, W. H. Pierce, George P. McLain, Frank Walker, Wm. M. Bowen, A. A. Allen,
B. S. Lauder, R. A. Todd, E. L. Blanchard, composing the
38 council of the city of Los Angeles, M. P. Snyder, mayor of the city of Los Angeles, The Los Angeles Traction Company, Wm. S. Hook, and E. A. Davis; and your orator prays that the said defendants may be required to answer the allegations of this bill, but not under oath—an answer under oath being waived—and that upon the final hearing of this cause it be adjudged and decreed that your orator is the owner in fee-simple of the said property rights, franchise and privileges granted to it, as herein set forth, subject to the terms and conditions of the said grant, and that the said defendants have not, nor have either of them any right, title or interest in said property rights, privileges or franchise aforesaid, or any part thereof.

And that it be further adjudged and decreed that the said orders or resolutions of the council of the city of Los Angeles pretending to reconsider the vote by which the said right, privileges and franchise were granted to your orator, and all proceedings taken by the said

council for the purpose of divesting the title of your orator to said property, rights, privileges and franchise, and all of said proceedings attempting to impair the contract rights of your orator under the said grant, or to hinder or impede your orator in the use and enjoyment of its said property rights, franchise and privileges, or to rescind, vacate or set aside the said sale so made to your orator of the said franchise, rights and privileges, are null and void and have no effect whatever, and that they be vacated and set aside, and that the said defendants and each of them and all of the officers, agents, employees and attorneys of the said defendants, and each of them, be forcibly restrained from preventing your orator from constructing the said road, turnouts, switches, and all of the various adjuncts and auxiliaries and works authorized to be constructed by the grant aforesaid, or preventing your orator from operating its said road and exercising all or any of the rights, privileges or franchises so granted to your orator, and that they be restrained from
39 in any manner interfering with such construction, operation and exercise, or interfering with your orator in the exercise of any of the rights, privileges or franchise therein granted, or from taking or attempting to take the property of your orator, or from ousting or attempting to oust or dispossess your orator therefrom, or in any way preventing your orator from having the full use and enjoyment of its said property and exercising the said franchise, rights, and privileges, or defeating, impairing or interfering with any right of your orator arising or accruing to your orator under the said grant.

And your orator further prays that an order be issued by this court directing the said defendants and each of them to appear at a time to be fixed by the court, and show cause why a writ of injunction should not be issued, pending this action, restraining the said defendants and each and every of them, their officers, agents, servants, attorneys, or employees, from preventing your orator from constructing said road, or in any manner interfering with the said construction of said road or any of its auxiliaries, adjuncts, switches, turnouts, and every other thing by the said grant authorized to be constructed, or preventing or attempting to prevent your orator from exercising all of the rights, privileges and franchise so granted to it, or impeding your orator in any manner in the full use and enjoyment of its said property, rights, privileges and franchise; and for all such other and further relief as may be just and proper.

J. S. CHAPMAN AND
BICKNELL, GIBSON & TRASK,
Solicitors for Complainant.
HUNSAKER & BRITT,
WORKS & LEE,
W. F. FITZGERALD,
DUNN & CRUTCHER, *Of Counsel.*
PACIFIC ELECTRIC RAILWAY COMPANY,
[SEAL.] By EDWARD E. BACON, *Secretary.*

40 UNITED STATES OF AMERICA, } ss:
District of Southern California, }

On this 8th day of March, 1902, before me personally appeared Epes Randolph who being by me duly sworn, deposes and says, that he is the vice-president and general manager of The Pacific Electric Railway Company, the complainant in the foregoing bill; that he has heard read the same, and knows the contents thereof, and that the same is true.

EPES RANDOLPH.

Subscribed and sworn to before me this 8th day of March, 1902.
[SEAL.] R. W. DARBY,
Notary Public in and for the County of Los Angeles, State of California.

(Endorsed:) No. 1018 In the United States circuit court ninth circuit southern district of California Pacific Electric Railway Company plaintiff *vs.* City of Los Angeles *et al.* defendants Bill of complaint. Filed Mar. 8 1902 Wm. M. Van Dyke clerk —— —— deputy Jno. S. Chapman Bicknell Gibson & Trask attorney-for complainant.

41 UNITED STATES OF AMERICA:

Circuit Court of the United States, Ninth Circuit, Southern District of California, Southern Division. In Equity.

The President of the United States of America to the City of Los Angeles, P. W. Powers, W. H. Pierce, George P. McLain, Frank Walker, Wm. M. Bowen, A. A. Allen, B. S. Lauder, R. A. Todd, and E. L. Blanchard, composing the council of the city of Los Angeles; M. P. Snyder, mayor of the city of Los Angeles; The Los Angeles Traction Company, Wm. S. Hook, and E. A. Davis, Greeting:

You are hereby commanded, that you be and appear in said circuit court of the United States aforesaid, at the court-room in Los Angeles, on the 7th day of April, A. D. 1902, to answer a bill of complaint exhibited against you in said court by the Pacific Electric Railway Company, a corporation, duly organized and existing under the laws of the State of California, and a citizen of the State of California, and to do and receive what the said court shall have considered in that behalf. And this you are not to omit, under the penalty of five thousand dollars.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this 8th day of March, in the year of our [SEAL.] Lord one thousand nine hundred and two and of our Independence the one hundred and twenty-sixth.

WM. M. VAN DYKE, *Clerk*,
By —— ——, *Deputy Clerk.*

Memorandum Pursuant to Rule 12, *Supreme Court U. S.*

You are hereby required. to enter your appearance in the
42 above suit, on or before the first Monday of April next, at the clerk's office of said court pursuant to said bill; otherwise the said bill will be taken *pro confesso.*

WM. M. VAN DYKE, *Clerk,*
By —— ——, *Deputy Clerk.*

Clerk's office: Los Angeles, California.

UNITED STATES MARSHAL'S OFFICE,
SOUTHERN DISTRICT OF CALIFORNIA.

I hereby certify, that I received the within writ on the 8th day of March 1902, and personally served the same on the 10th day of March 1902, on R. A. Todd, E. L. Blanchard and Wm. S. Hook by delivering to and leaving with R. A. Todd E. L. Blanchard and Wm. S. Hook said defendants named therein, personally, at the county of Los Angeles in said district, a certified copy thereof

H. Z. OSBORNE,
U. S. Marshal,
By G. F. McCULLOCH, *Deputy.*

Los Angeles, Mar. 11th 1902

43 UNITED STATES MARSHAL'S OFFICE,
SOUTHERN DISTRICT OF CALIFORNIA.

I hereby certify that I received the within writ on the 8th day of March 1902, and personally served the same on the 8th day of March 1902, on W. H. Pierce by delivering to and leaving with W. H. Pierce the said defendant named therein, personally, at the county of Los Angeles in the said district, a copy thereof.

H. Z. OSBORNE,
U. S. Marshal,
By G. F. McCULLOCH, *Deputy.*

Los Angeles, Cal., Mar. 11th 1902.

OFFICE OF THE U. S. MARSHAL,
SOUTHERN DISTRICT OF CALIFORNIA.

I hereby certify that I received the within writ on the 8th day of March 1902, and personally served the same on the 17th day of March 1902, on E. A. Davis by delivering to and leaving with E. A. Davis the said defendant named therein, personally, at the county of Los Angeles in the said district, a copy thereof.

H. Z. OSBORNE,
U. S. Marshal,
By G. F. McCULLOCH, *Deputy.*

Los Angeles, Cal., March 17th, 1902.

UNITED STATES MARSHAL'S OFFICE,
SOUTHERN DISTRICT OF CALIFORNIA.

I hereby certify that I received the within writ on the 8th day of March 1902, and personally served the same on the 10th day of March 1902, on the City of Los Angeles by delivering to and leaving with M. P. Snyder mayor of the city of Los Angeles said defendant named therein, personally, at the county of Los Angeles in the said district, a certified copy thereof.

H. Z. OSBORNE,
U. S. Marshal,
By G. F. McCULLOCH, *Deputy.*

Los Angeles, Mar. 11th 1902.

44

UNITED STATES MARSHAL'S OFFICE,
SOUTHERN DISTRICT OF CALIFORNIA.

I hereby certify that I received the within writ on the 8th day of March, 1902, and personally served the same on the 8th day of March, 1902, on the Los Angeles Traction Company by delivering to and leaving with T. J. Hook, president of The Los Angeles Traction Company said defendant named therein, personally, at the county of Los Angeles in the said district, a certified copy thereof.

Los Angeles, Cal., Mar. 11th, 1902.

H. Z. OSBORNE,
U. S. Marshal,
By G. F. McCULLOCH, *Deputy.*

UNITED STATES MARSHAL'S OFFICE,
SOUTHERN DISTRICT OF CALIFORNIA.

I hereby certify that I received the within writ on the 8th day of March 1902, and personally served the same on the 8th day of March 1902, on Wm. M. Bowen by delivering to and leaving with Wm. M. Bowen said defendant named therein, personally, at the county of Los Angeles in the said district, a certified copy thereof.

Los Angeles, Cal., Mar. 11th, 1902.

H. Z. OSBORNE,
U. S. Marshal,
By G. F. McCULLOCH, *Deputy.*

UNITED STATES MARSHAL'S OFFICE,
SOUTHERN DISTRICT OF CALIFORNIA.

I hereby certify that I received the within writ on the 8th day of March, 1902, and personally served the same on the 8th day of March, 1902, on B. S. Lauder by delivering to and leaving with B. S. Lauder the said defendant named therein, personally, at the county of Los Angeles in the said district, a certified copy thereof.

Los Angeles, Cal., Mar. 11th, 1902.

H. Z. OSBORNE,
U. S. Marshal,
By G. F. McCULLOCH, *Deputy.*

45 UNITED STATES MARSHAL'S OFFICE,
SOUTHERN DISTRICT OF CALIFORNIA.

I hereby certify that I received the within writ on the 8th day of March, 1902, and personally served the same on the 8th day of March, 1902, on Geo. P. McLain by delivering to and leaving with Geo. P. McLain the said defendant named therein, personally, at the county of Los Angeles in the said district, a certified copy thereof.

Los Angeles, Cal., Mar. 11th, 1902.

H. Z. OSBORNE,
U. S. Marshal,
By G. F. McCULLOCH, *Deputy.*

UNITED STATES MARSHAL'S OFFICE,
SOUTHERN DISTRICT OF CALIFORNIA.

I hereby certify that I received the within writ on the 8th day of March, 1902, and personally served the same on the 8th day of March, 1902, on Frank Walker by delivering to and leaving with Mrs. Frank Walker an adult member of the family of the said Frank Walker at the residence of the said Frank Walker the said defendant named therein, personally, at the county of Los Angeles in the said district, a certified copy thereof.

Los Angeles, Cal., Mar. 11th, 1902.

H. Z. OSBORNE,
U. S. Marshal,
By G. F. McCULLOCH, *Deputy.*

UNITED STATES MARSHAL'S OFFICE,
SOUTHERN DISTRICT OF CALIFORNIA.

I hereby certify that I received the within writ on the 8th day of March, 1902, and personally served the same on the 8th day of March, 1902, on M. P. Snyder by delivering to and leaving with Mrs. M. P. Snyder an adult member of the family of the said M. P. Snyder at the residence of the said M. P. Snyder the said defendant named therein, personally, at the county of Los Angeles in the said district, a certified copy thereof.

Los Angeles, Cal., Mar. 11th, 1902.

H. Z. OSBORNE,
U. S. Marshal,
By G. F. McCULLOCH, *Deputy.*

46 UNITED STATES MARSHAL'S OFFICE,
SOUTHERN DISTRICT OF CALIFORNIA.

I hereby certify that I received the within writ on the 8th day of March, 1902, and personally served the same on the 8th day of March, 1902, on A. A. Allen by delivering to and leaving with Mrs. Emeline Winslow an adult member of the family of the said A. A. Allen at the residence of the said A. A. Allen the said defendant

named therein, personally, at the county of Los Angeles in the said district, a certified copy thereof,

Los Angeles, Cal., Mar. 11th, 1902.

H. Z. OSBORNE,
U. S. Marshal,
By G. F. McCULLOCH, *Deputy.*

UNITED STATES MARSHAL'S OFFICE,
SOUTHERN DISTRICT OF CALIFORNIA.

I hereby certify that I received the within writ on the 8th day of March, 1902, and personally served the same on the 8th day of March, 1902, on P. W. Powers by delivering to and leaving with Mrs. P. W. Powers an adult member of the family of the said P. W. Powers, at the residence of the said P. W. Powers, the said defendant named therein, personally, at the county of Los Angeles in the said district, a certified copy thereof.

Los Angeles, Cal., Mar. 11th, 1902.

H. Z. OSBORNE,
U. S. Marshal,
By G. F. McCULLOCH, *Deputy.*

(Endorsed :) Marshal's doc. No. 451 Original. No. 1018 U. S. circuit court ninth circuit, southern district of California. Southern division. In equity. Pacific Electric Company, a corporation *vs.* The City of Los Angeles, *et al.* Subpœna. Filed Mar. 18 1902 Wm. M. Van Dyke clerk —— —— deputy.

47 In the United States Circuit Court, Ninth Circuit, Southern District of California, Southern Division.

PACIFIC ELECTRIC RAILWAY COMPANY, Complainant,
vs.
THE CITY OF LOS ANGELES, P. W. POWERS, W. H. Pierce, George P. McLain, Frank Walker, Wm. M. Bowen, A. A. Allen, B. S. Lauder, R. A. Todd, E. L. Blanchard, Composing the Council of the City of Los Angeles; M. P. Snyder, Mayor of the City of Los Angeles; The Los Angeles Traction Company, Wm. S. Hook, and E. A. Davis, Defendants. } In Equity.

The demurrer of the above-named defendants, The City of Los Angeles, P. W. Powers, W. H. Pierce, George P. McLain, Frank Walker, Wm. M. Bowen, A. A. Allen, B. S. Lauder, R. A. Todd, E. L. Blanchard, composing the council of the city of Los Angeles; M. P. Snyder, mayor of the city of Los Angeles, to the bill of complaint of the above-named plaintiff.

These defendants, by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint contained to be true in such manner and form as the same are herein set forth and alleged, do demur to the said bill. And for causes of demurrer show:

I.

That it appeareth by the plaintiff's own showing by the said bill that this court has no jurisdiction of the subject-matter of this suit.

II.

That there is no equity in said bill, and it appeareth by
48 the plaintiff's own showing by said bill that it is not entitled to the relief prayed by said bill against these defendants, or any of them.

III.

That said bill is defective in certainty in this, that it cannot be determined therefrom what number of franchises is embraced in the notice of sale set forth in paragraph XII of said bill, whether one franchise or more than one franchise;

That said bill is defective in certainty in this, that it cannot be determined therefrom what number of franchises was offered for sale, sold, or granted by the city council of the city of Los Angeles, pursuant to the notice of sale set forth in paragraph XII of said bill, whether one franchise or more than one franchise.

Wherefore, and for divers other good causes of demurrer appearing on the said bill, these defendants do demur thereto, and they pray the judgment of this honorable court, whether they shall be compelled to make any answer to the said bill; and they humbly pray to be hence dismissed with their reasonable costs in this behalf sustained.

W. B. MATHEWS,

Solicitor for Defendants, The City of Los Angeles, P. W. Powers, W. H. Pierce, George P. McLain, Frank Walker, Wm. M. Bowen, A. A. Allen, B. S. Lauder, R. A. Todd, E. L. Blanchard, Composing the Council of the City of Los Angeles; M. P. Snyder, Mayor of the City of Los Angeles.

CITY HALL, LOS ANGELES, CAL.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

W. B. MATHEWS,

49 *Solicitor for Defendants, The City of Los Angeles, P. W. Powers, W. H. Pierce, George P. McLain, Frank Walker, Wm. M. Bowen, A. A. Allen, B. S. Lauder, R. A. Todd, E. L. Blanchard, Composing the Council of the City of Los Angeles; M. P. Snyder, Mayor of the City of Los Angeles.*

Los Angeles, Cala., April 24, 1902.

STATE OF CALIFORNIA,
City of Los Angeles, County of Los Angeles, Southern District of California, Southern Division, } ss:

P. W. Powers being duly sworn, deposes and says: I am one of the above-named defendants. The foregoing demurrer is not interposed for delay.

P. W. POWERS.

Subscribed and sworn to before me, this 24th day of April, 1902.
HARTLEY SHAW,
[SEAL.] *Notary Public in and for the County of Los Angeles, State of California.*

(Endorsed:) (Original.) No. 1018. In the circuit court of the United States, for the southern district of California, Pacific Electric Railway Co., plaintiff *vs.* City of Los Angeles, *et al.*, defendants. *Demurrer.* Received copy of the within demurrer this 24 day of April 1902 Bicknell Gibson and Trask *et al.* attorneys for pl'nt'f Filed Apr. 24 1902 Wm. M. Van Dyke clerk —— deputy W. B. Mathews city attorney city hall, Los Angeles, Cal. attorney for defendants.

50 In the United States Circuit Court, Ninth Circuit, Southern District of California, Southern Division.

PACIFIC ELECTRIC RAILWAY COMPANY, Complainant,
vs.
THE CITY OF LOS ANGELES, P. W. POWERS, W. H. Pierce, George P. McLain, Frank Walker, Wm. H. Bowen, A. A. Allen, B. S. Lauder, R. A. Todd, E. L. Blanchard, Composing the Council of the City of Los Angeles; M. P. Snyder, Mayor of the City of Los Angeles; The Los Angeles Traction Company, Wm. S. Hook, and E. A. Davis, Defendants. } Demurrer.

The demurrer of the above-named defendants, Los Angeles Traction Company, William S. Hook, and E. A. Davis, to the bill of complaint of the above-named complainant.

These defendant-, by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint contained to be true in such manner and form as the same are herein set forth and alleged, do demur to the said bill; and for causes of demurrer showeth:

First. That it appeareth by the complainant's own showing in the said bill that this court hath not jurisdiction over the subject-matters of the said bill and hath not jurisdiction over the subject-matters of this action, for that it appears by the said bill that the complainant and the defendants are not citizens of different States, but that the complainant hath not attempted to show any other ground or basis of jurisdiction than this: That the action arises
51 under the Constitution of the United States; but upon complainant's own showing in the said bill this cause doth not arise under the Constitution.

Second. That there is no equity in said bill and it appeareth by the complainant's own showing in the said bill that the complainant is not entitled to the relief prayed for by the bill or to any relief, against these defendants or against any of them.

Wherefore, and for divers other good causes of demurrer appear-

ing on the said bill, these defendants do demur thereto; and humbly pray the judgment of this honorable court whether they shall be compelled to make any other or further answer to the said bill; and humbly pray to be hence dismissed with their reasonable costs in this behalf sustained.

GARRETT McENERNY,
E. E. MILLIKIN,
GIBBON, THOMAS & HALSTEAD,
Solicitors for Defendants Los Angeles Traction Company, Wm. S. Hook, and E. A. Davis.

Counsel:
PERCY WILSON.
CAMP & LISSNER.

I hereby certify that the foregoing demurrer is in my opinion well founded in point of law.

E. E. MILLIKIN,
Solicitor for Defendants Los Angeles Traction Company, Wm. S. Hook, and E. A. Davis.

Los Angeles, California, April 24th, 1902.

STATE OF CALIFORNIA,
County of Los Angeles, Southern District of California, Southern Division, } ss:

T. J. Hook, being duly sworn, deposes and says: That he is now and for a long time past has been the president of the defend-
52 ant corporation, Los Angeles Traction Company; and that he makes this affidavit for and on behalf of said Los Angeles Traction Company; and says that the foregoing demurrer is not interposed for delay.

THOMAS J. HOOK.

Subscribed and sworn to before me this 24th day of April, A. D. 1902.

[SEAL.]

EDW. L. PAYNE,
Notary Public in and for the County of Los Angeles, State of California.

(Endorsed:) No. 1018 In the circuit court of the United States, ninth circuit, southern district of California. Pacific Electric Railway Company, a corporation, plaintiff *vs.* City of Los Angeles *et al.*, defendants Demurrer Original Service of the within — is hereby admitted this — day of —— 190– Bicknell Gibson & Trask attorney- for — Filed Apr. 24, 1902 Wm. M. Van Dyke, clerk E. E. Millikin attorney for — 438–439 Bradbury block, Los Angeles, California.

53 At a stated term, to wit, the July term, A. D. 1902, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the southern district of California, south-

ern division, held at the court-room in the city of Los Angeles on Saturday the first day of November, in the year of our Lord one thousand nine hundred and two:

Present: The Honorable Olin Wellborn, district judge.

PACIFIC ELECTRIC RAILWAY COMPANY, a Corporation, Complainant,
vs.
THE CITY OF LOS ANGELES ET AL., Defendants. } No. 1018.

This cause having heretofore been submitted to the court for its consideration and decision upon complainant's application for a preliminary injunction, and the court having duly considered the same and being fully advised in the premises, it is now on this 1st day of November, 1902, being a day in the July term, A. D., 1902 of said circuit court of the United States for the southern district of California, ordered that said motion for an injunction be, and the same hereby is denied, and counsel for all of the parties to the said cause being now present in open court, with their consent and on their motion it is ordered that the demurrer of the defendants, The City of Los Angeles, P. W. Powers, W. H. Pierce, George P. McLain, Frank Walker, Wm. M. Bowen, A. A. Allen, B. S. Lauder, R. A. Todd, E. L. Blanchard, composing the council of the city of Los Angeles, and M. P. Snyder, mayor of the city of Los Angeles, to the bill of complaint, and the demurrer of defendants Los Angeles Traction Company, Wm. S. Hook and E. A. Davis, to the bill of complaint be, and the said demurrers hereby are now submitted to the court for its consideration and decision; whereupon, it is
54 ordered that said demurrers be, and the same hereby are sustained, and counsel for complainant having stated that complainant does not desire time in which to amend its bill of complaint, it is now ordered that said bill of complaint be dismissed for want of equity to which ruling of the court complainant by its counsel notes and is allowed an exception, which is hereby entered herein.

I, Wm. M. Van Dyke, clerk of the circuit court of the United States, for the southern district of California, do hereby certify the foregoing to be a full, true and correct copy of an original order denying application for injunction, sustaining demurrers and dismissing the bill of complaint, made and entered by said court November 1st, 1902, in the cause entitled Pacific Electric Railway Company, a corporation, complainant, *vs.* The City of Los Angeles, *et al.*, defendants, No. 1018, southern division, and remaining of record therein.

Attest my hand and the seal of said circuit court, this 1st day of November, A. D. 1902.

WM. M. VAN DYKE, *Clerk.*
[SEAL.] CHAS. N. WILLIAMS,
Deputy Clerk.

(Endorsed:) No. 1018 U. S. circuit court ninth circuit, southern district of California. Pacific Electric Railway Company, *vs.* The

City of Los Angeles, *et al.* Certified copy order denying application for preliminary injunction, sustaining demurrers and dismissing bill. Filed Nov. 1 1902 Wm. M. Van Dyke. clerk Chas. N. Williams deputy.

55 In the Circuit Court of the United States, Ninth Judicial Circuit, Southern District of California, Southern Division.

PACIFIC ELECTRIC RAILWAY COMPANY, Complainant,
vs.
THE CITY OF LOS ANGELES, P. W. POWERS, W. H. Pierce, George P. McLain, Frank Walker, Wm. M. Bowen, A. A. Allen, B. S. Lauder, R. A. Todd, E. L. Blanchard, Composing the Council of the City of Los Angeles; M. P. Snyder, Mayor of the City of Los Angeles; The Los Angeles Traction Company, Wm. S. Hook, and E. A. Davis, Defendants. } No. 1018.

The complainant filed its bill of complaint herein on the 8th day of March, 1902, which is hereto annexed.

A subpœna to appear and answer in said cause was thereupon on said 8th day of March, 1902, issued, returnable on the 7th day of April, 1902, which is hereto annexed.

On the 7th day of April, 1902, the defendants The City of Los Angeles and the Members of the Council of the City of Los Angeles, appeared herein by W. B. Mathews, Esq., their solicitor.

On the 7th day of April, 1902, the defendants The Los Angeles Traction Company, William S. Hook and E. A. Davis, appeared herein by E. E. Millikin, Esq., Messrs. Gibbon, Thomas & Halsted, their solicitors and P. R. Wilson, Esq., and Messrs. Camp & Lissner their counsel.

56 On the 24th day of April, 1902, the defendants The City of Los Angeles, P. W. Powers, W. H. Pierce, George P. McLain, Frank Walker, Wm. M. Bowen, A. A. Allen, B. S. Lauder, R. A. Todd, E. L. Blanchard, composing the council of the city of Los Angeles, M. P. Snyder, mayor of the city of Los Angeles, filed herein their demurrer to the bill of complaint, which is hereto annexed.

On the 24th day of April, 1902, the defendants Los Angeles Traction Company, William S. Hook and E. A. Davis filed herein their demurrer to the bill of complaint, which is hereto annexed.

On the 1st day of November, 1902, the court made and entered herein an order denying the application for a preliminary injunction and sustaining the demurrer of the defendants The City of Los Angeles, P. W. Powers, W. H. Pierce, George P. McLain, Frank Walker, Wm. M. Bowen, A. A. Allen, B. S. Lauder, R. A. Todd, E. L. Blanchard, composing the council of the city of Los Angeles, to the bill of complaint, and the demurrer of defendants Los Angeles Traction Company, Wm. S. Hook, and E. A. Davis, to the bill of complaint, and dismissing said bill of complaint, a copy of which order is hereto annexed.

On the 1st day of November, 1902, a final decree in accordance with said order was signed, filed, entered and recorded herein and is hereto annexed.

57 UNITED STATES OF AMERICA:

Circuit Court of the United States, Ninth Judicial Circuit, Southern District of California, Southern Division.

PACIFIC ELECTRIC RAILWAY COMPANY, Complainant, *vs.* THE CITY OF LOS ANGELES, P. W. POWERS, W. H. Pierce, George P. McLain, Frank Walker, Wm. M. Bowen, A. A. Allen, B. S. Lauder, R. A. Todd, E. L. Blanchard, Composing the Council of the City of Los Angeles; M. P. Snyder, Mayor of the City of Los Angeles; The Los Angeles Traction Company, Wm. S. Hook, and E. A. Davis, Defendants.	In Equity. No. 1018. Decree.

The court having on this 1st day of November, 1902, being a day in the July term, A. D., 1902, of said circuit court of the United States for the southern district of California, ordered that the demurrer of the defendants The City of Los Angeles, P. W. Powers, W. H. Pierce, George P. McLain, Frank Walker, Wm. M. Bowen, A. A. Allen, B. S. Lauder, R. A. Todd, E. L. Blanchard, composing the council of the city of Los Angeles, M. P. Snyder, mayor of the city of Los Angeles, and the demurrer of The Los Angeles Traction Company, Wm. S. Hook, and E. A. Davis, to the bill of complaint be sustained, and that said bill of complaint be dismissed for want of equity,

Now, therefore, it is ordered, adjudged and decreed that complainant's said bill of complaint be, and the same hereby is dismissed for want of equity, and that defendants have and recover of and from complainant their costs in this behalf taxed at $—

58 Los Angeles, California, November 1st, 1902.

OLIN WELLBORN, *Judge.*

Decree entered and recorded November 1st, 1902.

WM. M. VAN DYKE, *Clerk.*

(Endorsed:) No. 1018 U. S. circuit court ninth circuit, southern district of California. Southern division. Pacific Electric Railway Company, *vs.* The City of Los Angeles, *et al.*, Decree Filed Nov. 1 1902 Wm. M. Van Dyke clerk —— —— deputy.

59 Whereupon, said bill of complaint, subpœna, demurrer of defendants The City of Los Angeles, P. W. Powers, W. H. Pierce, George P. McLain, Frank Walker, Wm. M. Bowen, A. A. Allen, B. S. Lauder, R. A. Todd and E. L. Blanchard, composing the council of the city of Los Angeles, M. P. Snyder, mayor of the

city of Los Angeles, demurrer of defendants Los Angeles Traction Company, William S. Hook and E. A. Davis, copy of order sustaining demurrers and dismissing the bill of complaint and said final decree are hereto annexed, said final decree being duly signed, filed and enrolled pursuant to the practice of said circuit court.

Attest, etc.,

[SEAL.]

WM. M. VAN DYKE, *Clerk.*
CHAS. N. WILLIAMS,
Deputy Clerk.

(Endorsed:) No. 1018 In the circuit court of the United States ninth judicial circuit, for the southern district of California. southern division. Pacific Electric Railway Company, *vs.* The City of Los Angeles, *et al.*, Enrolled papers Filed November 1st 1902. Wm. M. Van Dyke, clerk. By Chas. N. Williams deputy clerk. Recorded Decree Register Book No. 3 page 8.

60 In the Circuit Court of the United States, Ninth Circuit, Southern District of California, Southern Division.

PACIFIC ELECTRIC COMPANY, a Corporation, Complainant,
vs.
THE CITY OF LOS ANGELES ET AL., Defendants. } No. 1018.

Opinion of the Court on Motion for Injunction and Demurrer to Bill.

Complainant brings this suit against The City of Los Angeles and other defendants to obtain a decree establishing complainant's ownership of the street railway franchise described in the bill, to vacate and set aside certain orders or resolutions of the city council of Los Angeles purporting to divest complainant of said franchise, and to enjoin any interference by defendants with the construction and operation of the railway authorized by said franchise.

The matters alleged in the bill are these:

Complainant and The City of Los Angeles, one of the defendants, are California corporations, the latter being a municipal corporation, under a freeholders' charter. Statutes of California, 1889, page 656. The other defendants are also citizens of said State, except The Los Angeles Traction Company, which is a corporation organized under the laws of the State of Illinois.

61 The legislature of the State of California, at its session held in the year 1901, passed an act entitled "An act providing for the sale of street railroad and other franchises in municipalities, and providing conditions for the granting of such franchises by legislative or other governing bodies, and repealing conflicting acts," which act became a law of said State on the 11th day of March, 1901, and is in the words and figures following:

"SECTION 1. Every franchise or privilege to erect or lay telegraph or telephone wires, to construct or operate street railroads upon any public street or highway, to lay gas pipes for the purpose of carrying

gas for heat and power, to erect poles or wires for transmitting electric heat and power along or upon any public street or highway, or to exercise any other privilege whatever hereafter proposed to be granted by boards of supervisors, boards of trustees, or common councils, or other governing or legislative bodies of any city and county, city or town within this State, except steam railroads and except telegraph or telephone lines doing an interstate business, and renewals of franchises for piers, chutes or wharves, shall be granted upon the conditions in this act provided, and not otherwise.

"SEC. 2. An applicant for any franchise or privilege above mentioned shall file with the governing or legislative body of the municipality an application, and thereupon said governing body shall, in its discretion, and when the application is accompanied with a petition praying that the same be granted, signed by the owners of three-fourths of the frontage of the real property fronting along and upon the route of the franchise applied for, must advertise the fact of said application, together with a statement that it is proposed to grant the same, in one or more newspapers of the city and county, city or town wherein the said franchise or privilege is to be exercised. Said advertisement must state that bids will be received for such franchise, and that it will be awarded to the highest bidder, and the same must be published in such newspaper once a
62 day for ten successive days, if it be a daily newspaper, and if there be no daily paper published in such city and county, city or town, then it shall be published in a weekly newspaper once a week for four successive weeks, and in either case the full publication must be completed not less than twenty (20) nor more than thirty (30) days before any further action can be taken thereon.

"SEC. 3. The publication must state the character of the franchise or privilege to be granted, the term for which it is granted, and, if it be a street railroad, the route to be traversed; that sealed bids therefor will be received up to a certain hour and day named therein, and that the successful bidder and his assigns must, during the life of said franchise, pay to the municipality two per cent. (2%) of the gross annual receipts of the person, partnership or corporation to whom the franchise is awarded, arising from its use, operation or possession. No percentage shall be paid for the first five (5) years succeeding the date of the franchise, but thereafter such percentage shall be payable annually; and in the event said payment is not made, said franchise shall be forfeited; *provided further*, that if the franchise be a renewal of a right already in existence, the payment of said percentage of gross receipts shall begin at once.

"SEC. 4. In case the franchise granted shall be an extension of an existing system of street railroad then the gross receipts shall be estimated to be one-half of the proportion of the total gross receipts of said system which the mileage of such extension bears to the total mileage of the whole system, and said estimate shall be exclusive as to the amount of the gross receipts of said extension.

"SEC. 5. Said advertisement shall also contain a statement that the said franchise will be granted to the person, firm or corpora-
63 tion who shall make the highest cash bid therefor; *provided only*, that at the time of the opening of said bids any respon-

sible firm or corporation present, or represented, may bid for said franchise or privilege a sum not less than ten per cent. above the highest sealed bid therefor, and said bid, so made, may be raised ten per cent. by any other responsible bidder present, and said franchise or privilege shall finally be struck off, sold and granted by said governing body to the highest bidder therefor, in gold coin of the United States, and said successful bidder shall be required to deposit with said governing body, or such person as it may direct, the full amount of his or its said bid, within twenty-four hours thereafter; and in case he or it shall fail so to do, then the said franchise or privilege shall be granted to the next highest bidder therefor.

"SEC. 6. Work to erect or lay telegraph or telephone wires, to construct street railroads, to lay gas pipes for the purpose of carrying gas for heat and power to erect poles or wires for transmitting heat or power, along or upon any public street or highway, or to exercise any privilege whatever, a franchise for which shall have been granted in accordance with the terms of this act, shall be commenced in good faith within not more than four months from the granting of any such franchise, and if not so commenced within said time said franchise so granted shall be declared forfeited, and shall be completed within not more than three years thereafter, and if not so completed within said time said franchise so granted shall be forfeited; *provided*, that for good cause shown the governing or legislative body may by resolution extend the time for completion thereof, not exceeding three months,

"SEC. 7. The grantee of every franchise or privilege granted under this act shall file a bond running to said city and county, city or town, with at least two good and sufficient sureties to be ap-
64 proved by such governing body, in a penal sum by it to be prescribed and set forth in the advertisement for bids, conditioned that such bidder shall well and truly observe, fulfil, and perform each and every term and condition of such franchise, and that in case of any breach of condition of such bond, the whole amount of the penal sum therein named shall be taken and deemed to be liquidated damages, and shall be recoverable from the principal and sureties upon said bond. Said bond shall be filed with such governing body within five days after such franchise is awarded, and in case said bond shall not be so filed, the award of such franchise shall be set aside, and the same may be granted to the next lowest bidder, or again offered for sale, in the discretion of said governing body.

"SEC. 8. It shall be the duty of the attorney general, upon the complaint of any municipality, or, in his discretion, upon the complaint of any tax-payer, to sue for the forfeiture of any franchise granted under the terms of this act, for the non-compliance with any condition thereof.

"SEC. 9. No clause or condition of any kind shall be inserted in any franchise or grant offered or sold under the terms of this act, which shall directly or indirectly restrict free and open competition in bidding therefor, and no clause or provision shall be inserted in any franchise offered for sale, which shall in anywise favor one

person, firm or corporation, as against another, in bidding for the purchase thereof.

"SEC. 10. Any member of any common council or other governing or legislative body of any city and county, city or town of this State, who, by his vote, violates or attempts to violate the provisions of this act, or any of them, shall be guilty of a misdemeanor, and may be punished therefor, as provided by law, and may be deprived of his office by the decree of a court of competent jurisdiction, after trial and conviction.

"SEC. 11. All acts or parts of acts in conflict herewith are hereby repealed; *provided, however*, that nothing herein contained
65 shall be construed as repealing or amending the following acts, to wit: 'An act relating to the granting by the counties and municipalities of franchises for the construction of paths and roads for the use of bicycles and other horseless vehicles,' approved March twenty-seventh, eighteen hundred and ninety-seven; 'An act to authorize cities and towns to grant franchises for the construction and maintenance of railroads beyond the limits of such cities or towns leading to public parks owned thereby,' being chapter forty of the laws of eighteen hundred and ninety-seven of the State of California.

"This act shall take effect immediately." (Statutes of California, extra session, Thirty-third Legislature, 1900, page 265.)

Complainant under and pursuant to said act, on the 25th day of November, 1901, presented to the governing body, to wit, the council of the city of Los Angeles, its application for an electric street railway franchise upon certain streets of said city.

Said council, on January the 6th, 1902, adopted and caused to be published, as provided in said act, a "notice of sale of a street railroad franchise," which notice defines the route of said proposed road, the terms and conditions upon which the franchise will be offered for sale and granted, and concludes as follows:

"Notice is also hereby given that sealed bids in writing will be received for the said franchise up to 11 o'clock in the forenoon of the 10th day of February, 1902; that the bids received will be opened at that time; that all bids must be for the payment of a stated sum in gold coin of the United States; and that said franchise will be granted to the person, firm or corporation who shall make the highest
66 cash bid therefor; provided only, that at the time of opening said bids any responsible firm, or corporation, present or represented, may bid for said franchise a sum not less than ten per cent. above the highest sealed bid therefor, and said bid so made may be raised ten per cent. by any responsible bidder present, and said franchise will finally be struck off, sold and granted by said city council to the highest bidder therefor in gold coin of the United States, and said successful bidder will be required to deposit with said city council, or such person as it may direct, the full amount of his or its bid within twenty-four hours thereafter, and in case he or it shall fail to do so, then the said franchise shall be granted to the next highest bidder therefor, and that the city council reserves the

right to reject any and all bids, provided, that no bid, whether sealed or otherwise, shall be received or considered unless the same be in writing and subscribed by a responsible bidder, or by his or its duly authorized agent."

On the day named in the notice, at 11 o'clock, a. m., the sealed bids were opened and found to be as follows: one by complainant of $25,000, and one by the defendant William S. Hook of $37,500, one by the defendant E. A. Davis of $139,000 and one by E. Murray of $415,000.

There being no bid of ten per cent. upon the amount bid by said Murray, said council, on the same day, accepted the bid of said Murray, and ordered, that the said franchise be struck off, sold and granted to him, and, that the city treasurer be authorized and directed to receive the money to be paid for such franchise by said Murray, and ordered and declared, that the period of twenty-four hours within which the said Murray is allowed to pay for the said franchise should expire at 3.15 o'clock, p. m., of February the 11th, 1902.

The three bids other than complainant's were made in the interest of the defendant corporation The Los Angeles Traction Com-
67 pany, and with the fraudulent intent to prevent competition in the bidding before the council, and the bid of $415,000 was made at the suggestion and for the benefit of said Los Angeles Traction Company, and with the fraudulent intent to prevent any further bidding when the sealed bids were opened.

The said Murray is not a person of any financial standing, and was not, at the time said bid was made, nor has he been at any time since, worth $1000, and could not, either from funds or credit of his own, have paid, nor did he ever intend to pay the said sum of $415,000, or any part thereof, and all of these matters were known by the said Los Angeles Traction Company, said E. A. Davis and said William S. Hook.

Said Murray did not pay the $415,000 within twenty-four hours, and never offered to pay said, or any sum at any time, and never appeared before said council on the 11th day of February, 1902, or at any other time.

The said Davis and the said Hook, agents of said traction company, appeared before said council on said 11th day of February, 1902, and when said twenty-four hours expired, and in pursuance of the fraudulent scheme to prevent competition in bidding, claimed, that said council had no power, under said act, to do anything or take any proceedings looking to the sale of said franchise, other than to accept the bid next highest to that of said Murray, namely, the bid of said Davis for the sum of $139,000, and to sell and grant to said Davis said franchise, and demanded, that said franchise be awarded to said Davis, under said bid, and for the benefit of said Los Angeles Traction Company, and tendered to said council the amount of the bid of said Davis, to wit: $139,000, gold coin, but which tender was refused by said council. Said Davis throughout said proceedings was acting for and on behalf of and in the interest

of said Los Angeles Traction Company, and sought to obtain
68 the grant of said franchise to himself, but for the benefit of said company. Said Davis and Hook and said traction company did then, and do now claim an interest in said franchise, and claim, that said Davis is the owner thereof, and make said claim adversely to complainant, which claim is without any foundation whatever, and said parties, nor either of them, has any right, title or interest in said franchise.

On the 11th day of February, 1902, and prior to the expiration of the said twenty-four hours, complainant, being previously apprised of the fact, that the bid of said Murray was a fraudulent contrivance of said traction company, William S. Hook and E. A. Davis to prevent further bidding, and knowing that said Murray would not appear within the twenty-four hours and pay said bid, or any part thereof, presented in writing a bid of $152,900 for said franchise, being ten per cent. over and above the bid of said Davis, and, when said twenty-four hours had expired, offered said sum to said council.

Upon the presentation by complainant of said bid of $152,900, said council called before them the city treasurer, who informed said council, that there had been no payment on Murray's bid, and thereupon said council, by a vote of seven of its members for and two against, passed a motion declaring said Murray a fraudulent and irresponsible bidder.

After said motion was passed, complainant bid for said franchise, the same described in said notice of sale, the sum of $152,900, and at the time presented to said council a certificate of deposit, drawn on the Farmers' and Merchants' Bank of Los Angeles, payable to said city, for said sum of $152,900.

Thereupon, and at the same meeting, the president of the council called for bids to purchase said franchise, above the one so made by complainant, but no other bid was received or offered, and thereupon said council ordered, that said street railway franchise
69 be struck off, sold and granted to complainant for said sum of $152,900, and, that said treasurer be authorized and directed to receive said purchase-money.

Pursuant to said order, said sum of $152,900 was paid by complainant to the treasurer of said city in gold coin of the United States for said franchise, and was accepted by said treasurer and said council, and immediately thereupon complainant delivered its bond, with two sureties, for $25,000, conditioned for the faithful performance of the terms of said street railway franchise, and otherwise in conformity with the act of the legislature of said State, to said council, and thereupon said council approved said bond, and caused the same to be filed in the office of the city clerk of said city.

After complainant paid said sum of $152,900 to said city treasurer, and executed and delivered its said bond to said city council, and after said council had struck off, sold and granted to complainant said franchise, and the same had vested and accrued, said council passed an ordinance granting said rights, privileges and franchise to complainant, and presented the ordinance to M. P. Snyder as

mayor of said city, and said Snyder afterwards, and about the 21st day of February, 1902, returned said ordinance without having affixed his signature thereto or approved the same, and with his objections to said ordinance, and thereafter, to wit, on the 21st day of February, 1902, said council, by reason of said mayor's disapproval of said ordinance, adopted a motion, that said ordinance be reconsidered, and upon the vote being again taken upon the passage of said ordinance, notwithstanding the mayor's veto, said council voted against the passage of said ordinance.

Thereupon, and on the same day, said council passed a resolution pretending and purporting to order any and all bids for said electric street railway franchise, including the bid made by com-
70 plainant, to be rejected, and directing and authorizing said treasurer of said city to refund to complainant said sum of $152,900, and ordering said city clerk to return said bond, executed as hereinbefore stated. The said clerk, acting under said instructions, offered to return said sum of money and said bond to complainant, but complainant refused to accept either said money or bond, denying the right of said council to annul or in any manner affect the franchise it claimed to have acquired under and by virtue of the proceedings already set forth.

At the same session of said council, a motion was carried, that the applications of complainant for franchises over certain streets in said city be referred to the board of public works, and, that said board redraft notice of sale of the same, and, that among said applications referred to in said motion was included the said application, upon which the above alleged sale was made to complainant.

Said council threatens to, and will, unless restrained by this court, offer said franchise, rights and privileges for sale and will, if any bids are made therefor, sell or attempt to sell the same, and grant or attempt to grant the same rights, privileges and franchise to any person making the highest bid therefor at said sale.

Said council, and other public authorities, threaten and intend to prevent complainant from constructing said street railway on any street in said city, and will, unless restrained by this court, forcibly prevent complainant from so doing; and on the 26th day of February, 1902, said council passed an order instructing the mayor, the street superintendent, or the chief of police to stop and prevent any attempt complainant might make to construct any street railway on any of said streets, with all the force at their command.

The matter in dispute exceeds, exclusive of interest and costs, the value of two thousand dollars, and is of a value not
71 less than $152,900.

Several affidavits have been filed by the parties, respectively, but they do not set up any additional facts which materially affect the legal aspects of the case.

Two demurrers have been interposed, one jointly by all the defendants except The Los Angeles Traction Company, William S. Hook and E. A. Davis, and the other by the last three defendants.

For causes both demurrers allege want of jurisdiction and equity, and one of them also alleges uncertainty in the bill.

On the question of jurisdiction complainant contends, that the proceedings set forth touching the street railway franchise in question, up to and including the acceptance, approval and filing of the bond required by the statute, constituted a complete and valid contract between said city and complainant, and vested in the latter said franchise, and that the resolutions or orders of said council, and the other proceedings taken and threatened for the purpose of vacating and setting aside said contract, are within the prohibitions of section 10, article 1 of the Constitution of the United States, and section 1 of the 14th amendment to said Constitution.

The writer of this opinion has recently, Nov. 1st, 1902, decided a case, in this court, Riverside and Arlington Railway Co. *v.* City of Riverside, — Fed. Rep. —, whose jurisdictional features bear such close resemblance to those here presented, that the opinion in that case may be fittingly adopted in this, and, for the reason and upon the authorities there given and cited, complainant's contention here as to a Federal question is sustained.

Coming now to the other cause of demurrer, want of equity in the bill, the next question to be considered is whether or not there was a valid grant to complainant of the street railway franchise in question.

72 On this branch of the case, complainant, at pages 156 and 183 of its brief, filed June the 10th, 1902, states its contention thus:

"The power to grant this franchise comes from the act of 1901.

* * * * * * *

"We next contend, that the question whether the plaintiff has the rights which it here claims is dependent upon the statute of 1901, and not any other authority whatever, and that under that act there was a complete grant."

Defendant's objections to the validity of said alleged grant may be generalized under two heads: First, that, in the proceedings had by the city council of Los Angeles for the sale of said franchise, certain requirements of said act of 1901 were not complied with, and, therefore, there was no valid grant; second, that said act of 1901 is void, because it undertakes to delegate municipal functions to a special commission, in violation of article 11, section 13 of the constitution of California, and, furthermore, said act, if constitutional, does not apply to the city of Los Angeles, because it concerns only municipal affairs, and, as to such affairs, said city, by article 11, section 6 of the constitution of California, as amended in 1896, is exempt from the operation of general laws, and subject only to its charter, whose provisions require, for granting a franchise, the conjoint action, by an ordinance, of council and mayor.

Either of these objections, if good, is fatal to the alleged grant, and I proceed at once to the consideration of the first.

In determining whether or not the council, in its proceedings for the disposition of said franchise, lawfully complied with the requirements of said act of 1901, the rule that mode is the measure

73 of power, and aside from the designated mode there is no power, should be carefully observed. Fort Scott *v.* Eads

Brokerage Co., 117 Fed. Rep. 51 (advance sheets); Board *v.* Templeton, 51 Ind. 266; Woodruff *v.* Berry, 40 Ark. 253; Saddler *v.* Eureka, 15 Nev. 39; State *v.* Cornell, 52 Neb. 25, 71 N. W. Rep. 961; Webster *v.* French, 12 Ill. 302; Zottman *v.* San Francisco, 20 Cal. 97; McCracken *v.* San Francisco, 16 Cal. 620; Heidelburg *v.* St. Francois County, 100 Mo. 69 12 S. W. Rep. 914.

It should also be borne in mind, that negative words in a statute show an intent to make its provisions imperative, and require strict performance, both as to time and manner, since section 1 of said act provides, that "Every franchise * * * to construct or operate street railroads * * * shall be granted upon the conditions in this act provided, and not otherwise" (23 Amer. & Eng. Ency. of Law, 1st ed., 455; Koch *v.* Bridges, 45 Miss. 247; Hurford *v.* City of Omaha, 4 Neb. 336; Cooley's Constitutional Limitations, 6th ed., 89).

In the present case, additional energy is imparted to the rules of construction above stated by sec. 10 of said act of 1901, which is as follows:

"Any member of any common council or other governing or legislative body of any city and county, city or town of this State, who, by his vote, violates or attempts to violate the provisions of this act, or any of them, shall be guilty of a misdemeanor, and may be punished therefor, as provided by law, and may be deprived of his office by the decree of a court of competent jurisdiction, after trial and conviction."

I come now directly to the inquiry, whether or not the proceedings of the council conformed, in all essentials, to the requirements of said act of 1901.

Defendants, among other alleged illegalities, contend, that the award of the franchise to complainant, on its bid of $152,900, after Murray's default, was a fatal departure from that part of sec-
74 tion 5 of said act of 1901, which provides, "that at the time of the opening of said bids any responsible firm or corporation present, or represented, may bid for said franchise or privilege a sum not less than ten per cent. above the highest sealed bid therefor, and said bid, so made, may be raised ten per cent. by any other responsible bidder present, and said franchise or privilege shall finally be struck off, sold and granted by said governing body to the highest bidder therefor, in gold coin of the United States, and said successful bidder shall be required to deposit with said governing body, or such person as it may direct, the full amount of his or its said bid, within twenty-four hours thereafter; and in case he or it shall fail so to do, then the said franchise or privilege shall be granted to the next highest bidder therefor."

The precise question here presented is this: When must the competition subsequent to sealed bids, for which said section provides, take place? To this question, the first clause of the foregoing extract from the section makes answer as follows: "At the time of the opening of said bids any responsible firm or corporation present, or represented, may bid for said franchise or privilege a sum not less than ten per cent. above the highest sealed bid

therefor, and said bid, so made, may be raised ten per cent. by any other responsible bidder present, and said franchise or privilege shall finally be struck off, sold and granted by said governing body to the highest bidder therefor, in gold coin of the United States." This clause does not confine the subsequent competition to the precise moment of opening the sealed bids, but it does make it the next step in the series of steps prescribed by said section, and thus requires it to take place before the franchise has been struck off to the highest bidder. Said clause certainly does not contemplate, that bidding shall continue after the franchise has been struck off. With that construction the clause would be meaningless.

75 Again, the last clause of said section, which, referring to default of the successful bidder in the matter of the deposit required of him, is as follows: "And in case he or it shall fail so to do, then the said franchise or privilege shall be granted to the next highest bidder therefor," forbids, by unavoidable implication, the idea, that there can be any competition after such default. It will be observed, that the words "struck off, sold and," used in a previous clause of the section, are omitted from the last clause. These words "struck off" and "sold," which are ordinarily employed, and particularly appropriate to designate the closing of a public sale to the highest bidder, such as that provided for by the clause where these words appear, would have been out of place in, and hence were designedly omitted from said last clause, for the reason, that it provides for a contingency, namely, the failure of the successful bidder to deposit the amount of his bid, which can only arise after the bidding has been closed. When the bidding has been closed and the successful bidder declared, or, in other words, when the property has been "struck off" and "sold," the next and last thing to be done is a formal transfer of ownership, by such means as are suited to the particular case, and this final act is fully and accurately prescribed in said last clause, by the use of the word "granted." Under said clause there is to be no striking off, no selling; those stages of competition have been passed; the only act to be performed is that of granting.

Complainant's construction of said clause, namely: "The meaning fairly is nothing more nor less than this—that it should be struck off to him who next bids the highest therefor," is, to my mind, wholly inadmissible and must be rejected. It is inconsistent, as I have just shown, with the peculiar phraseology of the clause, and as appears below, does violence to the general plan of the section. If

76 the legislature had intended that there should be further competition after default of the successful bidder, it would have chosen apt words to express the intention, rather than language which implies the contrary, and, besides, would have prescribed fully the nature and duration of the subsequent competition, that is, whether it was to be by sealed or open bids, and when it was to close.

The various steps, for which the section provides, consecutively arranged, are these: First, opening of the sealed bids; second, oppor-

tunity for further competition, in the manner and upon the terms prescribed in the section; third, striking off of the franchise to the highest bidder; fourth, allowance of twenty-four hours to the successful bidder to deposit the amount of his bid; and, fifth, in case said bidder fails to make the deposit, grant of the franchise to the next highest bidder therefor. I do not mean, that each step after the first must follow immediately, in point of time, its nearest antecedent, but, that nothing affecting the result of the competition can intervene between any two of said steps. Exigencies may arise, at any stage of the proceedings, to justify a postponement or adjournment of the whole matter, but whenever its consideration is resumed, the order of progression I have indicated must be adhered to.

In the case at bar, therefore, when the sealed bids were opened, and no bid of ten per cent. above the amount bid by Murray was then made, the action of the council in striking the franchise off to him, and fixing the time at which the twenty-four hours allowed by law for depositing the amount of his bid would expire, namely, 3.15 o'clock, p. m., of February the 11th, 1902, was regular.

When the time thus fixed had expired, and Murray had failed to make the required deposit, the action that should have been next taken is prescribed in the last clause of said section
77 already partially considered, which provides, that, if the successful bidder fails to make the deposit required of him, "the franchise shall be granted to the next highest bidder therefor." When, speaking concretely, the contingency referred to in said clause, namely, Murray's failure to deposit the amount of his bid, occurred, in the afternoon of February the 11th, 1902, it was then the duty of the council to grant the franchise to the next highest bidder, unless there was some sufficient reason for a refusal. This qualification of the council's duty I make because of the charge in the bill, that the next highest bid was fraudulent. Assuming the truth of this charge, which must be done on demurrer, the council ought not to have granted the franchise to said bidder. When it refused to do so, however, its power in the premises was exhausted, because said act of 1901 makes no provision for any subsequent proceeding, and the alleged grant of the franchise thereafter to complainant was without authority and void. The only way said franchise could have been lawfully granted after its refusal to the next highest bidder was under and pursuant to a new advertis-ment.

Complainant's argument, that this construction of said act impairs its efficiency by enabling designing and unscrupulous persons to defeat the disposition of any franchise offered for sale under said act, if not without force, can but be deemed inconclusive, for the rule is well settled, that the language of a statute, when plain and unequivocal, determines its meaning, regardless of consequences. (Bartlett *v.* Morris, 9 Porter, Ala., 268; 4 Bacon's Abridgement 652; Coffin *v.* Rich, 71 Amer. Dec. 563.)

The truth is, said act of 1901 never contemplated the scandalous frauds here charged, without denial, against some of the defendants, and, hence, it may be, no adequate safeg*au*rds against them were

erected. This defect in the law, however, if it exists, is an omission to be supplied by the legislature, not by the courts.

78 The declaration of the council, made after Murray's default, that he was a fraudulent and irresponsible bidder, and, that his bid was null and void, is an immaterial circumstance. If such an enquiry was authorized, it must have preceded the order striking off the franchise to Murray, since said order necessarily determined the lawfulness of his bid, and there was no power in the council to review said order. (Belser *v.* Hoffschneider, 104 Cal. 455.) After the franchise had been struck off, all the council could lawfully do, under the pending advertisement, was to allow Murray twenty-four hours to make the deposit, and, if he failed to do so, grant, or, on sufficient grounds, refuse to grant the franchise to the next highest bidder.

For the reasons above given, I am of opinion, that the complainant has not acquired the franchise it here claims, nor has it any valid contract with the city in relation thereto.

This conclusion renders it unnecessary for me to pass upon the other questions, which have been argued by counsel, and are outlined in an earlier part of this opinion.

The motion for injunction will be denied.

OLIN WELLBORN, *Judge.*

(Endorsed:) No. 1018 U. S. circuit court, southern district of California. Southern division. Pacific Electric Company, a corporation, *vs.* The City of Los Angeles, *et al.* Opinion of the court on motion for injunction and demurrer to bill. Filed Nov. 1 1902 Wm. M. Van Dyke clerk.

79 In the Circuit Court of the United States, Ninth Circuit, Southern District of California, Southern Division.

PACIFIC ELECTRIC RAILWAY COMPANY, Complainant,
vs.
THE CITY OF LOS ANGELES, P. W. POWERS, W. H. PIERCE, George P. McLain, Frank Walker, William M. Bowen, A. A. Allen, B. S. Lauder, R. A. Todd, E. L. Blanchard, Composing the Council of the City of Los Angeles; M. P. Snyder, Mayor of the City of Los Angeles; The Los Angeles Traction Company, William S. Hook, and E. A. Davis, Defendants.

The above-named complainant, The Pacific Electric Railway Company, considering itself aggrieved by the order and decree of said court entered on the 1st day of November, 1902, sustaining the demurrers of the defendants to the complainant's bill of complaint and dismissing the complainant's said bill, hereby appeals from said order and decree to the Supreme Court of the United States, and it prays that its appeal may be allowed, and that a transcript of the record and proceedings and papers upon which said order and decree

was made, duly authenticated, may be sent to the Supreme Court of the United States.

J. S. CHAPMAN,
BICKNELL, GIBSON & TRASK,
WORKS & LEE,
HUNSAKER & BRITT,
W. F. FITZGERALD,
DUNN & CRUTCHER,
Solicitors for Complainant and Appellant.

And now, to wit, on the 1st day of Dec., 1902, it is ordered
80 in open court that the appeal be allowed as prayed for.
OLIN WELLBORN, *Judge.*

(Endorsed:) Original: No. 1018. U. S. circuit court, ninth circuit, southern district of California, southern division. Pacific Electric R'y Co., complainant, *vs.* The City of Los Angeles, *et al.*, defendants. Appeal. Filed Dec. 1 1902 Wm. M. Van Dyke, clerk. Works & Lee, *et al.*, rooms 420 to 425 Henne building, Los Angeles, Cal. solicitors for complainant.

81 In the Circuit Court of the United States, Ninth Circuit, Southern District of California, Southern Division.

PACIFIC ELECTRIC RAILWAY COMPANY, Complainant, *vs.* THE CITY OF LOS ANGELES, P. W. POWERS, W. H. Pierce, George P. McLain, Frank Walker, William M. Bowen, A. A. Allen, B. S. Lauder, R. A. Todd, E. L. Blanchard, Composing the Council of the City of Los Angeles; M. P. Snyder, Mayor of the City of Los Angeles; The Los Angeles Traction Company, William S. Hook, and A. E. Davis, Defendants.	Assignment of Errors.

Now comes the above-named appellant, The Pacific Electric Railway Company, by J. S. Chapman, Bicknell, Gibson & Trask, Works & Lee, Hunsaker & Britt, W. F. Fitzgerald and Dunn & Crutcher, its counsel, and says that in the record and proceedings in the above-entitled matter there is manifest error in this, to wit:

1. That the said circuit court erred in sustaining the demurrer of the defendants, The City of Los Angeles, P. W. Powers, W. H. Pierce, George P. McLain, Frank Walker, William M. Bowen, A. A. Allen, B. S. Lauder, R. A. Todd and E. L. Blanchard, composing the council of the city of Los Angeles, and M. P. Snyder, mayor of the city of Los Angeles, to the complainant's bill of complaint.

2. That said court erred in sustaining the demurrer of the defendant-, The Los Angeles Traction Company, William S. Hook, and E. A. Davis, to the complainant's bill of complaint.

3. Said court erred in holding that the complainant was not the owner of and had not acquired the franchise and privilege to construct and operate a street railway in the city of Los
82 Angeles, as alleged in the complainant's bill of complaint.

4. The said court erred in holding that complainant had not a valid contract with the city of Los Angeles entitling it to exercise the privileges and franchise to construct and operate a street railway in said city of Los Angeles, as alleged in the complainant's bill of complaint.

5. The said court erred in holding and deciding that the proceedings of the defendants, The City of Los Angeles and the said council of said city for the sale of the said franchises and privileges set forth and described in the complaint, including the striking off and granting the same to the plaintiff, and the payment of the purchase price therefor, and the execution of the said bond, did not vest the title to the said franchises and privileges in the said plaintiff.

6. The said court erred in holding and deciding that the proceedings of said defendants taken subsequently to the striking off, granting and selling the said franchises and privileges described in the complainant's bill of complaint to the plaintiff, and the payments of the purchase price thereof, and the acceptance of the same, and the execution of the bond, and the approval thereof, did not deprive the plaintiff of its said property so purchased without due process of law, in violation of the Constitution of the United States as alleged in the complainant's bill of complaint.

7. The said court erred in holding and deciding that the defendant, The City of Los Angeles, did not, as alleged in the complainant's bill of complaint, impair the obligation of the contract to construct and operate a street railway in the city of Los Angeles in violation of the Constitution of the United States, as alleged in the complainant's bill of complaint.

8. The said court erred in holding and deciding that the defendant, The City of Los Angeles, did not take the property of the complainant, to wit: the franchise and right to construct and
83 operate a street railway in the city of Los Angeles, as alleged in the complainant's bill of complaint, without due or any compensation, in violation of the Constitution of the United States.

9. The said court erred in dismissing the complainant's bill of complaint.

10. The said court erred in decreeing that the defendants have and recover of and from the complainant their costs and disbursements in this cause laid out and expended.

Wherefore, the said Pacific Electric Railway Company prays that the decree and order of the said circuit court of the United States, ninth circuit, southern district of California, southern division, be reversed.

J. S. CHAPMAN,
BICKNELL, GIBSON & TRASK,
WORKS & LEE,
HUNSAKER & BRITT,
W. F. FITZGERALD,
DUNN & CRUTCHER,
Counsel for Appellant.

(Endorsed:) Original. No. 1018. U. S. circuit court, ninth circuit, southern district of California, southern division. Pacific Electric R'y Co., complainant, *vs.* The City of Los Angeles, *et al.*, defendants. Assignment of errors. Filed Dec. 1 1902 Wm. M. Van Dyke, clerk Works & Lee, *et al.*, rooms 420 to 425 Henne building, Los Angeles, Cal. solicitors for complainant.

84 At a stated term, to wit, the July term, A. D., 1902, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the southern district of California, southern division, held at the court-room in the city of Los Angeles, on Monday, the first day of December, in the year of our Lord, one thousand nine hundred and two:

Present: The Honorable Olin Wellborn, district judge.

PACIFIC ELECTRIC RAILWAY COMPANY, Complainant,
vs.
THE CITY OF LOS ANGELES, P. W. POWERS, W. H. PIERCE, George P. McLain, Frank Walker, William M. Bowen, A. A. Allen, B. S. Lauder, R. A. Todd, E. L. Blanchard, Composing the Council of the City of Los Angeles; M. P. Snyder, Mayor of the City of Los Angeles; The Los Angeles Traction Company, William S. Hook, and E. A. Davis, Defendants. } No. 1018.

On motion of W. J. Trask, Esq., of counsel for complainant, it is ordered that the appeal of said Pacific Electric Railway Company, complainant, from the order and decree of said court, entered on the 1st day of November, 1902, sustaining the demurrers of the defendants to complainant's bill of complaint, and dismissing the complainant's said bill, to the Supreme Court of the United States be, and the same hereby is allowed, and that a transcript of the record, and proceedings and papers upon which said order and decree were made duly authenticated be sent to the Supreme Court of the United States. It is further ordered that the bond on appeal in the sum of five hundred (500) dollars tendered by said
85 appellant, The Pacific Electric Railway Company, be, and the same hereby is approved.

86 In the Circuit Court of the United States, Ninth Circuit, Southern District of California, Southern Division.

PACIFIC ELECTRIC RAILWAY COMPANY, Complainant,
vs.
THE CITY OF LOS ANGELES, P. W. POWERS, W. H. PIERCE, GEORGE P. McLain, Frank Walker, William M. Bowen, A. A. Allen, B. S. Lauder, R. A. Todd, E. L. Blanchard, Composing the Council of the City of Los Angeles; M. P. Snyder, Mayor of the City of Los Angeles; The Los Angeles Traction Company, William S. Hook, and E. A. Davis, Defendants.

Know all men by these presents that we, The Pacific Electric Railway Company, as principal, and —— —— of the city of Los Angeles,

State of California, as surety, are held and firmly bound unto the above-named defendants, The City of Los Angeles, P. W. Powers, W. H. Pierce, George P. McLain, Frank Walker, William M. Bowen, A. A. Allen, B. S. Lauder, R. A. Todd, E. L. Blanchard, composing the council of the city of Los Angeles, M. P. Snyder, mayor of the city of Los Angeles, The Los Angeles Traction Company, William S. Hook and E. A. Davis, in the penal sum of five hundred dollars ($500.00) to be paid to the said parties, for the payment of which well and truly to be made we bind ourselves, and each of us, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 29th day of November, in the year of our Lord, 1902.

Whereas, the above-named Pacific Electric Railway Company has prosecuted an appeal to the Supreme Court of the United States to reverse the order and decree rendered in the above-entitled
87 suit by the judge of the circuit court of the United States for the ninth circuit, southern district of California;

Now, therefore, the condition of this obligation is such that if the above-named Pacific Electric Railway Company shall prosecute said appeal to effect and answer all damages and costs if it shall fail to make said appeal good, then this obligation shall be void; otherwise, the same shall be and remain in full force.

PACIFIC ELECTRIC RAILWAY COMPANY,
By EPES RANDOLPH, *V. P. & G. M.*
E. C. MYERS.

Sealed and delivered and taken and acknowledged this 29th day of November, 1902, before me.

[SEAL.] R. W. DARBY,
Notary Public.

Approved.
OLIN WELLBORN, *Judge.*

(Endorsed:) Original. No. 1018. U. S. circuit court, ninth circuit, southern district of California. Southern division. Pacific Electric R'y Co., complainant, *vs.* The City of Los Angeles, *et al.*, defendants. Undertaking on appeal. Filed Dec. 1, 1902 Wm. M. Van Dyke, clerk. Works & Lee, *et al.* rooms 420 to 425 Henne building, Los Angeles, Cal. solicitors for complainant.

88 In the Circuit Court of the United States of the Ninth Judicial Circuit in and for the Southern District of California, Southern Division.

PACIFIC ELECTRIC RAILWAY COMPANY, Complainant,
vs.
THE CITY OF LOS ANGELES, P. W. POWERS, W. H. Pierce, George P. McLain, Frank Walker, Wm. M. Bowen, A. A. Allen, B. S. Lauder, R. A. Todd, E. L. Blanchard, Composing the Council of the City of Los Angeles; M. P. Snyder, Mayor of the City of Los Angeles; The Los Angeles Traction Company, Wm. S. Hook, and E. A. Davis, Defendants. } No. 1018.

I, Wm. M. Van Dyke, clerk of the circuit court of the United States of America, of the ninth judicial circuit, in and for the southern district of California, do hereby certify the foregoing eighty-seven (87) typewritten pages, numbered from 1 to 87 inclusive, and comprised in one (1) volume, to be a full, true and correct copy of the record, pleadings, opinion of the court, assignment of errors and all proceedings and papers upon which the order and
89 decree of said court entered on the first day of November 1902 were made, and that the same together constitute the transcript of the record on appeal to the Supreme Court of the United States, in said cause.

I do further certify that the cost of the foregoing record is $42.80 the amount whereof has been paid me by The Pacific Electric Railway Company, the appellant in said cause.

In testimony whereof, I have hereunto set my hand and affixed the seal of said circuit court of the United States of America, on the ninth judicial circuit, in and for the southern district of California, this 5th day of December, in the year of our Lord one thousand nine hundred and two, and of the Independence of the United States the one hundred and twenty-seventh.

Seal U. S. Circuit Court, Southern Dist. Cal., 1886.

WM. M. VAN DYKE,
Clerk of the Circuit Court of the United States of America of the Ninth Judicial Circuit in and for the Southern District of California.

Endorsed on cover: File No. 18,760. S. California C. C. U. S. Term No. 532. Pacific Electric Railway Company, appellant, *vs.* The City of Los Angeles, P. W. Powers, W. H. Pierce, *et al.* Filed December 24", 1902.